

1 THURSDAY, JANUARY 7, 1999 MORNING SESSION  
 2 \*\*\*\*\*  
 3 THE COURT: OKAY. WE'RE BACK ON THE RECORD AND  
 4 ALTHOUGH I CAN'T SEE YOU.  
 5 MS. CHABER: SORRY, JUDGE.  
 6 THE COURT: I ASSUME YOU ARE THERE. OKAY.  
 7 MS. CHABER, YOU MAY PROCEED WITH THE PLAINTIFF'S OPENING  
 8 STATEMENT.  
 9 MS. CHABER: THANK YOU, YOUR HONOR.  
 10 THIS IS A CASE ABOUT A PACK OF LIES THAT HAVE  
 11 BEEN TOLD BY THIS COMPANY AND THE OTHER MEMBERS OF THE  
 12 CIGARETTE INDUSTRY, AND IT IS ABOUT THE REFUSAL OF THIS  
 13 COMPANY TO TAKE ANY RESPONSIBILITY FOR THE HARM AND  
 INJURY  
 14 THAT THEIR PRODUCTS HAVE CAUSED. PATRICIA WAS ONE OF  
 THEM.  
 15 PATRICIA HENLEY, WHO YOU DIDN'T MEET, BUT IS  
 16 SITTING HERE AT THE COUNSEL TABLE, DOES TAKE PERSONAL  
 17 RESPONSIBILITY. SHE TAKES PERSONAL RESPONSIBILITY FOR  
 18 HAVING SMOKED AND SHE IS PAYING FOR THAT PERSONAL  
 19 RESPONSIBILITY WITH THE ULTIMATE PRICE, AND THAT IS HER  
 20 LIFE. SHE KNOWS THAT AND SHE ACCEPTS THAT.  
 21 THE QUESTION THAT I'M GOING TO PUT TO YOU AT THE  
 22 END OF THE CASE IS WHAT RESPONSIBILITY SHOULD PHILIP  
 MORRIS  
 23 TAKE. PATRICIA IS NOT HERE TO GET RICH QUICK. SHE IS NOT  
 24 HERE THINKING THAT THIS IS THE LOTTERY AND THAT SHE IS  
 GOING  
 25 TO WIN. SHE KNOWS SHE LOSES AT THE END, BUT WHAT SHE IS  
 26 HERE FOR ARE FOR TWO THINGS. ONE, TO GET HER MEDICAL BILLS  
 27 PAID. AND TWO, TO SEND A MESSAGE.  
 28 MR. OHLEMEYER: OBJECTION, YOUR HONOR.

JUDITH ANN OSSA, CSR NO. 2310

1 THE COURT: SUSTAINED. THIS IS ARGUMENT.  
 2 MS. CHABER: (WRITING ON BOARD) IN THIS TRIAL,  
 3 WE'LL PRESENT EVIDENCE THAT WILL SHOW YOU THE LIES THAT  
 HAVE  
 4 BEEN TOLD BY PHILIP MORRIS AND THE OTHER CIGARETTE  
 5 MANUFACTURERS. THE LIES ARE THAT THERE IS A MEDICAL AND  
 6 SCIENTIFIC CONTROVERSY AS TO WHETHER OR NOT CIGARETTE  
 7 SMOKING CAUSES LUNG CANCER, EMPHYSEMA, HEART DISEASE  
 AND  
 8 OTHER DISEASES, WHETHER NICOTINE IS ADDICTIVE.  
 9 AND THIS IS A LIE THAT WAS CREATED IN THE 1950S,  
 10 AND IT WAS CREATED FOR ONE REASON ONLY, TO KEEP THIS  
 11 INDUSTRY MAKING MONEY. THE TRUTH IS THAT THERE IS NO  
 12 SCIENTIFIC OR MEDICAL CONTROVERSY THAT LUNG CANCER IS  
 CAUSED  
 13 BY SMOKING CIGARETTES, THAT SMOKING CIGARETTES CAUSES  
 14 EMPHYSEMA, SMOKING CIGARETTES CAUSES HEART DISEASE AND  
 OTHER  
 15 DISEASES.  
 16 THE SECOND LIE IS THAT CIGARETTE SMOKING IS  
 17 COMPLETELY THE FREE CHOICE OF THE PERSON WHO SMOKES.  
 AND I  
 18 WOULD AGREE THAT THE PERSON WHO PICKS UP THE FIRST  
 CIGARETTE

THE 19 HAS MADE A FREE CHOICE AND MAYBE THE SECOND AND MAYBE  
20 THIRD. AND MAYBE, IF YOU'RE LUCKY, YOU'RE NOT A PERSON THAT  
21 WILL CONTINUE OR WILL GET ADDICTED.  
22 MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. THIS IS  
23 ALL ARGUMENT.  
24 THE COURT: SUSTAINED.  
25 MS. CHABER: IT'S EVIDENCE  
26 THE COURT: WAIT A MINUTE, MS. CHABER.  
27 MS. CHABER: I'M TALKING ABOUT EVIDENCE.  
28 THE COURT: MS. CHABER, DON'T ARGUE WITH ME.

JUDITH ANN OSSA, CSR NO. 2310

3

NOT 1 MS. CHABER: I'M SORRY.  
2 THE COURT: I AM TELLING YOU, YOU LIMIT YOURSELF  
3 TO WHAT YOU THINK THE EVIDENCE IS GOING TO SHOW AND DO  
4 ARGUE AT THIS POINT.  
5 MS. CHABER: OKAY. THE EVIDENCE WILL SHOW THAT  
6 THE TRUTH IS THAT CIGARETTE SMOKING IS -- AND I DON'T CARE  
7 IF YOU WANT TO CALL IT DEPENDENCY (WRITING ON BOARD) OR  
8 ADDICTION, BUT THE TRUTH IS THAT THE MEDICAL TESTIMONY  
FROM 9 PEOPLE LIKE THE SURGEON GENERAL OF THE UNITED STATES IS  
THAT 10 NICOTINE IS ADDICTIVE, THAT NICOTINE IS AN ADDICTIVE  
11 SUBSTANCE, AS ADDICTIVE AS HEROIN OR COCAINE.  
12 AND WE'LL BRING YOU EXPERTS THAT HELPED WRITE  
13 THESE REPORTS (INDICATING), THAT ARE AUTHORS AND EDITORS  
OF 14 SURGEON GENERAL'S REPORTS, AND THEY WILL TELL YOU THAT  
NOT 15 ONLY IS THAT TRUTH, BUT IT'S A TRUTH THAT PHILIP MORRIS AND  
16 THE CIGARETTE INDUSTRY HAS KNOWN FOR MORE YEARS THAN  
THE 17 SURGEON GENERAL.  
18 THE SECOND LIE THE EVIDENCE WILL SHOW IS THAT THE  
AND 19 PUBLIC WAS FULLY AWARE OF HOW DEADLY CIGARETTES WERE,  
20 THAT THE PUBLIC HAS BEEN AWARE SINCE THE TURN OF THE  
21 CENTURY, SINCE BEFORE THE TURN OF CENTURY, SINCE KING  
22 JAMES.  
23 THE TRUTH IS THERE HAS BEEN INFORMATION OUT  
24 THERE. THERE HAVE ALWAYS BEEN SOME STRONG PUBLIC HEALTH  
25 ADVOCATES WHO HAVE ADVOCATED AGAINST CIGARETTES AND  
HAVE 26 TALKED ABOUT THEIR HAZARDS. BUT THE TRUTH IS THAT THE  
27 PUBLIC WAS GETTING THE OTHER SIDE OF THE STORY, THEIR SIDE  
28 OF THE STORY ON A MUCH MORE REGULAR BASIS UNTIL  
RECENTLY.

JUDITH ANN OSSA, CSR NO. 2310

4

1 AND ONE OF THE THINGS THAT WE'RE BEGINNING TO  
2 HAVE TO DO IS WE'RE GOING TO HAVE TO TAKE STEPS BACKWARDS.  
3 WE'RE IN 1999 NOW. BUT WE'RE GOING TO GO BACK TO 1980,  
4 1970, 1960, 1950, EVEN TO 1940, AND THE WHEN THE WORLD WAS A  
5 DIFFERENT PLACE AND THERE WERE DIFFERENT UNDERSTANDINGS

OF  
6 THE PUBLIC.  
7 SO THE TRUTH IS THAT THE PUBLIC MAY BE AWARE OF  
8 HAZARDS OF SMOKING IN THE PAST. BUT ONE, THEY WERE NOT  
9 FULLY AWARE. TWO, THEY DID NOT KNOW HOW DEADLY WE WERE  
10 TALKING ABOUT. THE POPULAR FOLK WISDOM IN THE 1950S AND  
11 '60S WAS "DON'T SMOKE CIGARETTES AS A CHILD. IT WILL STUNT  
12 YOUR GROWTH."  
13 AND THE EVIDENCE WILL SHOW THAT THE CIGARETTES  
14 WE'RE TALKING ABOUT ARE NOT PURE TOBACCO LEAF ROLLED  
INTO A  
15 PIECE OF PAPER. WE'RE TALKING ABOUT A FINELY, HIGHLY  
16 SOPHISTICATED, ENGINEERED PRODUCT WITH SOME 4,000  
CHEMICALS  
17 THAT ARE CAREFULLY CALCULATED AND FIGURED OUT HOW MUCH  
OF  
18 THIS, THAT AND THE OTHER THING IS PUT IN THERE BY THE  
19 CIGARETTE COMPANIES.  
20 THE NEXT LIE THE EVIDENCE WILL SHOW IS THAT  
21 NICOTINE WAS NOT MANIPULATED, THAT THE CIGARETTE  
COMPANIES'  
22 NICOTINE IS IN THE TOBACCO LEAF. THEY DIDN'T MANIPULATE  
23 IT. BUT THE TRUTH WILL BE THAT THEY CAREFULLY KNOW WHAT  
24 LEVEL OF NICOTINE THEY ARE SEEKING TO HAVE DELIVERED TO  
THE  
25 PERSON, BECAUSE THEY KNOW, AND THE EVIDENCE WILL SHOW,  
ONE  
26 OF THE THINGS ABOUT NICOTINE IS IT SORT OF WEARS OFF AFTER  
A  
27 LITTLE WHILE AND YOU NEED THE NEXT DOSE. AND THERE ARE  
WAYS  
28 FOR PEOPLE TO REGULATE THE DOSES THAT THEY GET, AND THEY

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5

1 KNEW THAT TOO.  
2 THE EVIDENCE WILL SHOW THAT THE TRUTH IS THAT  
3 NICOTINE IS MANIPULATED BY RECONSTITUTING TOBACCO, BY  
TAKING  
4 IT OUT, BY PUTTING IT BACK IN AGAIN, BY USING THINGS LIKE  
5 AMMONIA AND AMMONIA CHEMISTRY TO CHANGE THE ACIDITY, THE  
PH  
6 OF THE TOBACCO, SO THAT THE NICOTINE BECOMES A GAS FORM  
7 RATHER THAN A SOLID FORM, SO THAT IT GETS TO THE BRAIN  
8 QUICKER, SO THAT THE EFFECT IS FELT BETTER, SO THAT IT  
9 SATISFIES MORE.  
10 AND THE NEXT LIE IS THAT CHILDREN, YOUTH ARE NOT  
11 TARGETED BY THESE COMPANIES, THAT EVERYTHING THAT THEY  
DO  
12 THAT HAS TO DO WITH ADVERTISING, PROMOTION, BILLBOARDS,  
YOU  
13 NAME IT, HAS TO DO WITH TRYING TO GET ALREADY SMOKERS TO  
14 SWITCH BRANDS. "WE DON'T WANT TO ENTICE CHILDREN TO  
SMOKE.  
15 WE JUST WANT TO GET THE WINSTON SMOKER TO START SMOKING  
16 MARLBORO."  
17 THE TRUTH, THE EVIDENCE WILL SHOW, IS THAT  
18 CHILDREN ARE TARGETED AND THEY'RE TARGETED FOR A REASON  
AND  
19 THE REASON IS SIMPLE. IF YOU DON'T START SMOKING --  
20 MR. OHLEMEYER: OBJECTION, YOUR HONOR. THIS IS

21 ARGUMENT.  
22 MS. CHABER: THIS IS THE EVIDENCE, YOUR HONOR.  
23 IT HONESTLY IS.  
24 THE COURT: WHEN YOU SAY "THE REASON IS SIMPLE,"  
25 THAT'S ARGUMENT.  
26 MS. CHABER: THE EVIDENCE WILL SHOW THAT  
27 CHILDREN ARE TARGETED, THAT THESE COMPANIES KNOW  
EXACTLY  
NUMBER OF 28 WHAT APPEALS TO CHILDREN, BECAUSE AN OVERWHELMING

JUDITH ANN OSSA, CSR NO. 2310

6  
1 SMOKERS, OVERWHELMING, START IN THEIR TEENS. AND IF THEY  
2 ARE NOT HOOKED BY THE TIME THEY ARE AGE 25, THE LIKELIHOOD  
3 OF GETTING ADDICTED TO THOSE CIGARETTES AND KEEPING  
BUYING 4 THOSE PACKS IS REDUCED INCREDIBLY.  
5 AND THE CIGARETTE INDUSTRY HAS FOLLOWED  
6 PSYCHOLOGICAL RESEARCH ON WHAT SMOKERS NEED, WANT,  
DESIRE, 7 WHAT CHILDREN ARE ATTRACTED TO, WHAT WILL GET THEIR  
8 ATTENTION, WHAT WILL GET THEM BUYING THE CIGARETTES.  
9 PHILIP MORRIS, MARLBORO, THE BRANDS PATRICIA  
10 SMOKED, HAS ITS HIGHEST PENETRATION, ITS HIGHEST AMOUNT  
OF 11 USE IN THE 15 TO 19-YEAR-OLD SEGMENT OF THE POPULATION.  
12 JUST COINCIDENTALLY, PATRICIA STARTED SMOKING WHEN SHE  
WAS 13 15.  
14 AND ANOTHER LIE THAT THE EVIDENCE WILL SHOW IS  
15 THAT THE CIGARETTE COMPANIES HAVE NO RESPONSIBILITY. AND  
16 WE'LL PROVE TO YOU THAT THEY DO.  
17 WE'RE IN 1999 NOW AND WE KNOW THESE FACTS  
18 (INDICATING). 400,000 AMERICANS DIE EVERY YEAR FROM SMOKING  
19 CIGARETTES. THREE JUMBO JET PLANES FULL CRASHING EVERY  
20 DAY. THE CAUSES OF DEATH. TOBACCO IS A LARGER CAUSE OF  
21 DEATH THAN ANY OTHER MAJOR CAUSE OF DEATH ADDED  
TOGETHER, 22 ADDING AIDS, FIRES, DEATHS FROM CAR ACCIDENTS, HOMICIDES,  
23 SUICIDE, COCAINE, CRACK, ALCOHOL.  
24 THE EVIDENCE WILL SHOW THAT NOT ONE OF THEIR  
25 EXPERTS OR THEIR COMPANY OFFICIALS WILL ANSWER THE  
QUESTION 26 AFFIRMATIVELY, SAY YES TO THE QUESTION: DOES CIGARETTE  
27 SMOKING CAUSE LUNG CANCER? DOES CIGARETTE SMOKING  
CAUSE 28 EMPHYSEMA? DOES CIGARETTE SMOKING CAUSE HEART DISEASE?  
NOT

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7  
1 ONE OF THEM WILL SAY YES.  
2 ONE IN FIVE DEATHS IN THIS COUNTRY ARE DUE TO  
3 SMOKING, AND LUNG CANCER HAS EXCEEDED BREAST CANCER AS  
THE 4 LEADING CAUSE OF DEATH IN WOMEN. AND EVERY YEAR, 3,000  
5 CHILDREN -- EXCUSE ME -- EVERY DAY -- NOT A LOT IN A YEAR --  
6 EVERY DAY, 3,000 CHILDREN START SMOKING.

7 WE TALKED A LITTLE BIT EARLIER ABOUT THE  
8 SCIENTIFIC CONTROVERSY AND THAT THERE IS NONE. AND THE  
9 EVIDENCE WILL SHOW THAT THEY CREATED IT, SUSTAINED IT AND  
10 STILL CLAIM IT TODAY.  
11 AND WHEN WE DO OUR TRAVELING BACK, WE'LL SEE THAT  
12 TIMES WERE DIFFERENT -- TIMES WERE DIFFERENT WHEN PATRICIA  
13 STARTED SMOKING. THE EVIDENCE WILL SHOW THAT THE  
CIGARETTE  
14 COMPANIES MANIPULATED NICOTINE TO EXPLOIT ITS  
ADDICTIVENESS,  
15 TARGETED CHILDREN FOR THE VERY SAME REASON. THAT THEY  
16 FAILED TO WARN OF ALL THE HAZARDS BEFORE 1969.  
17 1966 IS THE FIRST TIME THAT THERE WAS ANY WARNING  
18 ON A CIGARETTE PACK. THIS IS A PACK OF MARLBORO RED  
19 (DEMONSTRATING), A BRAND THAT PATRICIA STARTED SMOKING.  
AND  
20 THIS WAS PURCHASED TODAY. AND IT SAYS ON THE SIDE:  
21 "SURGEON GENERAL'S WARNING: CIGARETTE SMOKE CONTAINS  
22 CARBON MONOXIDE."  
23 TODAY, THERE'S A REQUIREMENT FOR FOUR ROTATING  
24 WARNINGS, THIS BEING ONE OF THEM, THAT GO ON A PACK OF  
25 CIGARETTES. IN 1966, THERE WAS NO REQUIREMENT. IN 1950,  
26 THERE WAS NO REQUIREMENT. IN 1940, THERE WAS NO  
27 REQUIREMENT. AND DESPITE THE KNOWLEDGE THAT THEY HAD,  
28 KNOWLEDGE THAT THEY SHOULD HAVE HAD AS AN EXPERT  
SELLING A

JUDITH ANN OSSA, CSR NO. 2310

8

1 PRODUCT, THEY DIDN'T WARN AT ALL.  
2 THEY DIDN'T WARN ABOUT WHAT THE CIGARETTES  
3 CONTAINED. THEY DIDN'T WARN ABOUT THE AMOUNT OF SMOKING.  
4 THEY DIDN'T GIVE ANY USE INSTRUCTIONS. "TWO A DAY IS OKAY.  
5 DON'T TAKE MORE THAN 10," LIKE A BOTTLE OF ASPIRIN MIGHT  
6 SAY.  
7 1966, THE FIRST WARNING THAT WENT ON SAID: "THE  
8 SURGEON GENERAL SAYS THAT SMOKING MAY BE HAZARDOUS TO  
YOUR  
9 HEALTH." CIGARETTE COMPANIES SAID OTHERWISE. AND THEY  
HAD  
10 ACCESS TO MEDIA, THE TELEVISION AND THE RADIO, TO  
11 NEWSPAPERS.  
12 AND THEY PUT THEIR MESSAGE OUT, AND THE HEALTH  
13 COMMUNITY'S MESSAGE WAS OVERWHELMED BY WHAT WAS PUT  
OUT BY  
14 THE TOBACCO COMPANIES SAYING "THERE'S CONTROVERSY"  
15 (INDICATING). "IT'S OKAY. KEEP SMOKING THE CIGARETTES.  
16 WE'LL LOOK INTO IT."  
17 AND THE EVIDENCE WILL SHOW THAT IN 1994, WHEN  
18 CALLED TO TESTIFY UNDER OATH BEFORE CONGRESS, THE CHIEF  
19 EXECUTIVE OFFICERS OF EACH ONE OF THE TOBACCO COMPANIES  
20 SWORE UNDER OATH THAT CIGARETTE SMOKING HAD NOT BEEN  
PROVEN  
21 TO BE THE CAUSE OF ANY DISEASE, AND THAT CIGARETTE  
SMOKING  
22 WAS NOT ADDICTIVE. 1994.  
23 AND IT'S ONLY BEEN IN THE LAST COUPLE OF YEARS  
24 THROUGH LAWSUITS THAT THE DOCUMENTS OF THIS INDUSTRY  
HAVE  
25 SEEN THE LIGHT OF DAY.  
26 MR. OHLEMEYER: I OBJECT TO THAT, YOUR HONOR, AS

27 A MISSTATEMENT OF FACT AND AN ARGUMENT.  
28 THE COURT: SO FAR AS THE MISSTATEMENT OF FACT

JUDITH ANN OSSA, CSR NO. 2310

9

1 OBJECTION IS CONCERNED, THE JURY KNOWS, BECAUSE I TOLD  
THEM,  
2 THAT WHAT THE LAWYERS TELL THEM IN THE OPENING  
STATEMENTS OR  
3 AT ANY OTHER TIME, AND THAT INCLUDES ALL THE LAWYERS, IS  
NOT  
4 EVIDENCE. AND I HAVE TOLD THEM THE SOURCES FROM WHICH  
THE  
5 EVIDENCE COMES.  
6 I'M GOING TO OVERRULE THE OBJECTION THAT IT'S  
7 ARGUMENT. BUT THE OBJECTION THAT IT DOESN'T STATE THE  
FACTS  
8 IS NOT AN OBJECTION THAT I CAN SUSTAIN, BECAUSE THE  
EVIDENCE  
9 IS GOING TO BE WHAT IT IS, AND I DON'T KNOW WHAT IT'S GOING  
10 TO BE. AND THIS ISN'T EVIDENCE. SO YOU MAY PROCEED.  
11 MS. CHABER: SO LET'S GO BACK IN TIME. LET'S GO  
12 BACK TO THE 1940S, AND LET'S GO BACK TO SCIENTISTS WHO  
WERE  
13 DOING AUTOPSIES AND SEEING PATIENTS, SEEING REPEATEDLY  
OVER  
14 AND OVER AGAIN A DISEASE, LUNG CANCER, IN PATIENTS THAT  
15 SMOKED. AND THESE DOCTORS REPORTED IT, AND THEY  
REPORTED IT  
16 IN THE MEDICAL JOURNALS.  
17 IT GOT A LITTLE BIT OF PUBLICITY AT THE TIME.  
18 AND THEN WORLD WAR II CAME ALONG AND CIGARETTES WERE  
19 CONSIDERED THE THING TO SEND TO THE SOLDIERS FIGHTING THE  
20 WAR. CIGARETTES WERE INCLUDED IN THE RATIONS.  
21 ADVERTISEMENTS WERE TAKEN OUT BY THE TOBACCO INDUSTRY  
SAYING  
22 "LUCKY STRIKE GOES TO WAR. DO YOUR SERVICEMEN A FAVOR.  
23 SEND THEM A CHESTERFIELD." A DIFFERENT TIME THAN TODAY.  
24 1946, PATRICIA HENLEY WAS BORN. AND SHE IS BORN  
25 INTO THE MIDST OF A SOCIETY 70 PERCENT OF WHICH SMOKED,  
26 DIFFERENT FROM TODAY. THE OTHER 30 PERCENT MAY WELL  
HAVE  
27 BEEN AWARE OF THE OTHER SIDE, THE HEALTH SIDE OF THE  
STORY.  
28 AND MAYBE THE 70 PERCENT SHOULD HAVE KNOWN, BUT THAT  
WAS THE

JUDITH ANN OSSA, CSR NO. 2310

10

1 NORM THEN. PEOPLE SMOKED.  
2 BUT SOMETHING HAPPENED IN THE EARLY 1950S, AND IT  
3 GAVE THE CIGARETTE INDUSTRY A BIG SCARE. A DOCTOR  
REPORTED  
4 THAT HE WAS ABLE AND HAD, THROUGH EXPERIMENTS, SHOWN  
CANCER  
5 IN MICE, WHEN THEIR SKIN WAS PAINTED WITH THE TARS OF  
6 CIGARETTE SMOKE. AND THIS GOT BIG NEWS AT THE TIME. THE  
7 PROOF WAS THERE. THERE WAS BIG NEWS.  
8 SO WHAT DID THE CIGARETTE COMPANIES DO? THEY GOT

9 TOGETHER IN 1953 TO FIGURE OUT HOW TO RESPOND TO THIS AND  
10 HOW TO, IN THEIR WORDS, REASSURE THE SMOKERS SO THEY  
COULD  
11 KEEP SMOKING. AND THEY HIRED NOT SCIENTISTS BUT A PUBLIC  
12 RELATIONS FIRM, A PUBLIC RELATIONS FIRM BY THE NAME OF HILL  
13 AND KNOWLTON. AND THIS BECAME THE PUBLIC RELATIONS FIRM  
FOR  
14 THE INDUSTRY, TO SPEAK TO THE PUBLIC FOR THE CIGARETTE  
15 INDUSTRY.  
16 AND SOME OF THEIR CONCERNS WERE THAT THERE WAS NO  
17 EVIDENCE THAT THE PUBLICITY ABOUT THE CANCER STUDIES HAD  
18 ABATED OR WAS ABOUT TO ABATE. AND THAT THERE WERE NO  
19 PERIODICALS CONSIDERING ARTICLES ON THE SUBJECT, WOMAN'S  
20 HOME COMPANION, LOOK AND COSMOPOLITAN.  
21 AND WHAT DID HILL AND KNOWLTON IN THEIR  
22 PRELIMINARY RECOMMENDATIONS TO THE CIGARETTE  
MANUFACTURES  
23 SAY THEY SHOULD DO? THEY SAID:  
24 "THE UNDERLYING PURPOSE OF ANY ACTIVITY AT THIS  
25 STAGE SHOULD BE REASSURANCE OF THE PUBLIC THROUGH  
26 WIDER COMMUNICATION OF FACTS TO THE PUBLIC. IT  
27 IS IMPORTANT THAT THE PUBLIC RECOGNIZE THE  
28 EXISTENCE OF WEIGHTY SCIENTIFIC VIEWS WHICH HOLD

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11  
1 THERE IS NO PROOF THAT CIGARETTE SMOKING IS A  
2 CAUSE OF LUNG CANCER."  
3 AND THEN THEY HIRED THE SCIENTISTS TO PROVE THE  
4 THEORY THEY HAD JUST CREATED. ONE OF THE THINGS THAT THEY  
5 WANTED TO COMMUNICATE TO THE PUBLIC, TO COORDINATE AND  
6 DISSEMINATE TO THE PUBLIC WAS:  
7 "WHAT ARE THE BENEFITS AND ENJOYMENTS DERIVED  
8 FROM SMOKING BOTH BY SCIENTIFIC TESTS AND BY  
9 MEASUREMENT OF SMOKER REACTIONS AND ATTITUDES?  
10 WHAT ARE THE SMOKING HABITS OF LONG-LIVED  
11 DISTINGUISHED PUBLIC LEADERS? WHAT ARE THE HUMAN  
12 ILLS ERRONEOUSLY ATTRIBUTED TO TOBACCO OVER THE  
13 CENTURIES?"  
14 THEY ALSO TALKED ABOUT OTHER THINGS, LIKE  
15 POLITICS AND POLITICIANS AND PREVENTING LEGISLATION,  
16 PREVENTING WARNING LABELS. AND AS A RESULT OF THIS  
MEETING,  
17 ALL THE TOBACCO COMPANIES -- BEFORE I TURN THAT OVER  
18 (INDICATING) -- IT'S TOTALLY ILLEGIBLE -- IS WHAT THEY  
19 CALLED A "FRANK STATEMENT TO CIGARETTE SMOKERS."  
20 AND IT WAS PUBLISHED FULL PAGE IN NEWSPAPERS ALL  
21 OVER THIS COUNTRY, I BELIEVE ANY CITY THAT HAD MORE THAN  
22 50,000. AND AT THE BOTTOM ARE THE NAMES OF ALL OF TOBACCO  
23 COMPANIES WHO PUT OUT THIS "FRANK STATEMENT TO CIGARETTE  
24 SMOKERS", THIS PROMISE THAT THEY MADE.  
25 AND THIS IS THE ADVERTISING COPY (INDICATING),  
26 WHICH IS A LITTLE BIT MORE LEGIBLE. THEY ARE DISCUSSING THE  
27 RECENT REPORTS. "ON THE THEORY THAT CIGARETTE SMOKING IS  
IN  
28 SOME WAY LINKED WITH LUNG CANCER IN HUMAN BEINGS,

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1 WE DON'T BELIEVE THAT ANY SERIOUS MEDICAL  
2 RESEARCH, EVEN THOUGH ITS RESULTS ARE  
3 INCONCLUSIVE, SHOULD BE DISREGARDED OR LIGHTLY  
4 DISMISSED. WE'RE GOING TO TAKE THIS SERIOUSLY,  
5 BUT WE'RE GOING TO CALL ATTENTION TO THE FACT  
6 THAT THERE ARE OTHER PEOPLE IN THE SCIENTIFIC  
7 COMMUNITY WHO HAVE PUBLICLY QUESTIONED THE  
8 CLAIMED SIGNIFICANCE OF THESE EXPERIMENTS. THERE  
9 MAY BE MANY POSSIBLE CAUSES OF LUNG CANCER."  
10 THE EVIDENCE WILL SHOW THAT CIGARETTE SMOKING IS  
11 THE PRIMARY, MAJOR, BIGGER THAN EVERYTHING PUT TOGETHER  
12 CAUSE OF LUNG CANCER. OCCUPATIONAL EXPOSURES TO OTHER  
13 SUBSTANCES IS THE SECOND, AND EVERYTHING ELSE IS REALLY  
14 TINY, THAT THERE IS NO AGREEMENT AMONG AUTHORITIES  
REGARDING  
15 WHAT THE CAUSE IS, AND THERE IS NO PROOF THAT CIGARETTE  
16 SMOKING IS ONE OF THE CAUSES.  
17 AND HERE'S WHERE THEY MAKE THE PROMISE  
18 (WRITING ON BOARD):  
19 "WE ACCEPT AN INTEREST IN PEOPLE'S HEALTH AS A  
20 BASIC RESPONSIBILITY PARAMOUNT TO EVERY OTHER  
21 CONSIDERATION IN OUR BUSINESS. WE BELIEVE THE  
22 PRODUCTS WE MAKE ARE NOT INJURIOUS TO HEALTH. WE  
23 ALWAYS HAVE AND ALWAYS WILL COOPERATE CLOSELY  
24 WITH THOSE WHOSE TASK IT IS TO SAFEGUARD THE  
25 PUBLIC HEALTH."  
26 YOU WILL HEAR EVIDENCE THAT THIS COOPERATION WAS  
27 ONLY ON THE SURFACE, THAT THERE WERE THINGS NOT  
COMMUNICATED  
28 TO THE HEALTH COMMUNITY, AND THAT ALL THE CHARGES  
AGAINST

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13

1 CIGARETTE SMOKING HAVE BEEN ABANDONED FOR LACK OF  
EVIDENCE.  
2 NOW, THEY SAY: "WELL, IF IT COULD EVEN BE  
3 SUSPECTED, THIS IS A MATTER OF DEEP CONCERN TO  
4 US."  
5 AND THIS IS WHAT THEY'VE PLEDGED:  
6 "WE'VE PLEDGED AID AND ASSISTANCE TO THE  
7 RESEARCH EFFORT INTO ALL PHASES OF TOBACCO USE  
8 AND HEALTH. THE JOINT FINANCIAL AID WILL, OF  
9 COURSE, BE IN ADDITION TO WHAT IS ALREADY BEING  
10 CONDUCTED BY INDIVIDUAL COMPANIES. WE ARE  
11 ESTABLISHING A JOINT INDUSTRY GROUP, CONSISTING  
12 OF THE UNDERSIGNED" -- OF WHICH PHILIP MORRIS IS  
13 ONE -- "AND THIS GROUP WILL BE KNOWN AS THE  
14 TOBACCO INDUSTRY RESEARCH COMMITTEE."  
15 AND NOW THEY'VE GOT TO GO OUT AND FIND SCIENTISTS  
16 WHO ARE GOING TO SAY THE THINGS THAT THEY'VE JUST  
PROMISED  
17 THE PUBLIC ARE TRUE. NOW, THERE'S PHILIP MORRIS.  
18 YOU'LL SEE HIS NAME (INDICATING). JOSEPH CULLMAN  
19 AT THAT TIME WAS AT BENSON & HEDGES, BUT HE WENT TO WORK  
FOR  
20 PHILIP MORRIS. AND YOU'LL SEE THAT MANY OF THE PEOPLE  
21 WORKING FOR THE INDUSTRY MOVE FROM ONE COMPANY TO THE  
OTHER  
22 COMPANY.  
23 NOW, THERE WERE SOME DRAFTS REVIEWED BY THE



24 EXECUTIVES WHO WERE MEETING TO DECIDE -- AND THIS I BELIEVE  
25 IS THE SECOND DRAFT -- THE FIRST DRAFT, SECOND DRAFT.  
26 THERE'S A THIRD DRAFT, WHICH IS WHAT ENDED UP BEING  
27 PUBLISHED, SENT OUT TO ALL THE NEWSPAPERS.  
28 AND IN THIS DRAFT, THEY'VE CROSSED OUT A FEW

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14

ARE 1 THINGS, ONE OF WHICH IS "WE BELIEVE OUR PRODUCTS WE MAKE  
2 NOT INJURIOUS TO HEALTH, SINCE THERE HAS BEEN NO PROOF TO  
3 THE CONTRARY." THEY CROSSED THAT OUT.  
4 AND THEY CROSSED OUT ANOTHER ONE. "WE WILL NEVER  
5 PRODUCE AND MARKET A PRODUCT SHOWN TO BE THE  
6 CAUSE OF ANY SERIOUS HUMAN AILMENT." THEY DID  
7 NOT PROMISE THE PUBLIC THAT.  
8 AND FROM 1953 -- THIS IS THE END OF 1953, WHEN  
9 ALL THESE MEETINGS ARE HAPPENING AND THE ACTION IS BEING  
10 TAKEN, THE DEFENDANTS CONTINUED TO BE A UNITED FRONT  
WHEN IT 11 CAME TO DEALING WITH ISSUES OF HEALTH TO THE PUBLIC AND TO  
12 THE PUBLIC HEALTH COMMUNITY, EVEN THOUGH THEY REMAINED  
13 COMPETITORS WITHIN THEMSELVES AS TO WHO COULD GET THE  
14 BIGGEST MARKET SHARE.  
15 AND ONE OF THE THINGS THEY AGREED AMONGST  
16 THEMSELVES WAS THAT THEY'D SET UP THIS COMMITTEE, THIS  
17 INDEPENDENT RESEARCH COMMITTEE. THEY'D HIRE SCIENTIFIC  
18 ADVISERS TO DETERMINE WHAT STUDIES SHOULD BE DONE AND  
WHAT 19 STUDIES SHOULDN'T BE DONE, WHICH ONES SHOULD GET  
PUBLISHED 20 AND DISSEMINATED AND WHICH ONES SHOULDN'T.  
21 AND LAWYERS CONTROLLED THE SCIENTIFIC COMMITTEE  
22 AND DETERMINED WHAT GOT DONE. AND THEY ALSO MADE AN  
23 AGREEMENT THAT THE COMPANIES THEMSELVES WOULD NOT  
CONDUCT 24 IN-HOUSE RESEARCH ON CANCER. AND THE EVIDENCE WILL SHOW  
25 THAT THE REASON IS IF IT WAS IN-HOUSE AND IT WAS BAD, THEY  
26 WOULDN'T BE ABLE TO CRITICIZE IT.  
27 THE EVIDENCE WILL SHOW THEY MADE THIS AGREEMENT  
28 SO THAT THEY COULD CRITICIZE, DENY AND DISTORT SCIENCE

JUDITH ANN OSSA, CSR NO. 2310

15

THE 1 COMING OUT OF INDEPENDENT PLACES. AND IF THEY CALLED IT  
2 TOBACCO INDUSTRY RESEARCH COMMITTEE, WITH ITS SCIENTIFIC  
3 ADVISORY BOARD INDEPENDENT, THEN THEY'D BE ABLE TO  
CRITICIZE 4 ANYTHING THAT CAME OUT OF IT.  
5 AND IN 1970, PHILIP MORRIS LEARNED THAT R.J.  
6 REYNOLDS WAS INDEED DOING SOME IN-HOUSE STUDIES ON MICE  
BACK 7 IN THE 1950S, WHEN THE WYNDER STUDIES CAME OUT AND THE  
MICE 8 PAINTING. THEY SAID: "THAT'S NOT APPROPRIATE TO DO BECAUSE  
9 YOU CAN'T TELL WHAT'S GOING TO HAPPEN TO A HUMAN FROM A  
10 MOUSE."  
11 BUT THE EVIDENCE WILL SHOW THAT THEY DID THEIR

OWN MOUSE EXPERIMENTS. AND WHEN PHILIP MORRIS FOUND  
OUT  
THERE  
WAS A PHONE CALL AND THE MOUSE HOUSE GOT SHUT DOWN.  
AND PHILIP MORRIS SAID: "WE'LL TAKE ALL THE  
DOCUMENTS GENERATED FROM THERE AND WE'LL SHIP THEM OFF  
TO  
COLOGNE, GERMANY, OFFSHORE, OUT OF THE UNITED STATES AND  
THESE WILL BE DESTROYED."  
EVIDENCE WILL SHOW THAT THE CIGARETTE COMPANIES,  
THEY  
PHILIP MORRIS, CLAIMED THAT THE PUBLIC KNEW MORE THAN  
AND  
DID, THAT THE PUBLIC SHOULD HAVE KNOWN HOW HAZARDOUS  
THEY  
DEADLY SMOKING CIGARETTES COULD BE, WOULD BE, BUT THAT  
DIDN'T.  
THEIR OTHER RESPONSE IN THE 1950S WAS TO PUT  
EACH  
FILTERS ON THE CIGARETTES. AND THEY ALL COMPETED WITH  
OTHER TO COME OUT WITH A BETTER FILTER TIP, AND THEY MADE  
HEALTH CLAIMS ABOUT THEM. "KENT WITH A MICRONITE FILTER.  
IRRITATION  
PROTECT YOUR T-ZONE. THIS WILL NOT CAUSE THROAT

JUDITH ANN OSSA, CSR NO. 2310

16  
OR COUGH." THOSE KINDS OF HEALTH CLAIMS WERE MADE IN THE  
ADVERTISING.  
AND THEN THERE WAS AN INVESTIGATION. CONGRESS  
THEY  
CALLED A COMMITTEE -- PUT A COMMITTEE TOGETHER ON WHAT  
CALLED FALSE AND MISLEADING ADVERTISING, TO LOOK INTO  
IN  
WHETHER ANY OF THESE HEALTH CLAIMS THAT WERE BEING MADE  
THESE  
THESE ADS WERE TRUE. AND AS CONGRESS SOMETIMES WORKS  
CONCLUDE  
SLOWLY, IT TOOK THEM UNTIL THE END OF THE 1950S TO  
THAT THERE WAS NO BASIS FOR THE HEALTH CLAIMS.  
IN THE MEANTIME, BECAUSE THEY DID NOT WANT TO BE  
THESE  
REGULATED, THE COMPANIES AGREED "WE BETTER STOP MAKING  
HEALTH CLAIMS. AND WE'LL HAVE A VOLUNTARY CODE THAT WE'LL  
ALL FOLLOW."  
AND ADVERTISING CHANGED AT THAT POINT IN TIME.  
OUTDOOR  
AND WHAT IT CHANGED TO WAS GLAMOUR. IT CHANGED TO  
THERE  
SPRINGTIME FRESH, IT CHANGED TO MARLBORO COUNTRY. AND  
WAS ADVERTISING ON TV.  
AND BECAUSE THE TIME IS SO DIFFERENT THAN IT IS  
THAT  
NOW, I WANT TO SHOW YOU A COUPLE OF TV ADVERTISEMENTS  
AND  
PATRICIA WOULD SEE WHEN SHE WAS GROWING UP IN THE '50S  
'60S. AND UNLIKE TODAY, WHERE THERE ARE 122 CABLE  
EVEN  
STATIONS, THERE WERE THREE NETWORKS AND THE CIGARETTE  
COMPANIES FIGURED OUT HOW TO BLOCK TIME SLOTS SO THAT  
IF YOU CHANGED FROM ONE TV PROGRAM TO THE NEXT, YOU'D

GET A

25 CIGARETTE AD.  
26 AND THEY EACH SPONSORED DIFFERENT SHOWS. AND AS  
27 YOU'LL SEE, THE ADS WEREN'T JUST ADS. THEY BECAME SORT OF  
28 PART OF THE SHOW ITSELF.

JUDITH ANN OSSA, CSR NO. 2310

17

JURY,

1 I KNOW THIS IS GOING TO BE A LITTLE HARD FOR SOME  
2 OF THE JURORS TO SEE. I HAVEN'T FIGURED OUT WHERE TO PUT  
3 THIS YET. CAN YOU SEE IT?  
4 THE COURT: LET ME JUST SUGGEST SOMETHING TO  
5 YOU. I DON'T WANT THE LAWYERS TALKING TO THE JURY.  
6 THROUGHOUT THE TRIAL, IF YOU WANT QUESTIONS PUT TO THE  
7 YOU NEED TO ASK ME TO DO IT. I ONLY INTERRUPTED TO SAY THAT  
8 NOW SO WE GET THE PRECEDENT SET.  
9 MS. CHABER: I'M ONLY CONCERNED THAT SOME JURORS  
10 MAY NOT --  
11 THE COURT: LET ME JUST SAY THIS TO THE JURORS.  
12 IF AS THIS STARTS TO PLAY ANY OF YOU CAN'T SEE IT OR HEAR  
13 IT, RAISE YOUR HANDS RIGHT AWAY AND WE'LL START IT OVER FOR  
14 YOU TO SEE.  
15 MS. CHABER: I'LL SEE IF I CAN TURN IT A  
16 LITTLE.  
17 THE COURT: MAYBE AUDREY CAN HELP. DO YOU NEED  
18 SOME HELP?  
19 MS. CHABER: I THINK I'VE GOT IT NOW.  
20 (TO THE JURY:) CAN YOU ALL SEE THIS NOW?  
21 SORRY, JUDGE. I DID IT AGAIN.  
22 THE COURT: THAT'S ALL RIGHT. LET ME DO IT IN  
23 THE FUTURE.  
24 MS. CHABER: YOUR HONOR, MIGHT I HAVE SOME  
25 HELP? TECHNOLOGY AND ME DON'T GO TOGETHER.  
26 THE COURT: SURE.  
27 (VIDEOTAPE PLAYED)  
28 MS. CHABER: I'M MAKING AN ASSUMPTION THAT

JUDITH ANN OSSA, CSR NO. 2310

18

WERE

DEFENDANTS,

SCIENTIFIC

MARLBORO

1 EVERYBODY KNOWS THAT THAT'S LUCILLE BALL AND DEZI ARNEZ.  
2 (VIDEOTAPE PLAYED)  
3 MS. CHABER: AND THERE ARE HUNDREDS OF THESE AND  
4 EVERY MANUFACTURER HAD THEIR PROGRAM, MANY OF WHICH  
5 SHOWN DURING HOURS THAT CHILDREN WATCHED TV.  
6 THE EVIDENCE WILL SHOW PATRICIA SAW THESE ADS AND  
7 ADS LIKE THIS ON A REGULAR BASIS AS A NORMAL PART OF HER  
8 LIFE GROWING UP AT A TIME WHEN, ACCORDING TO THE  
9 THE PRODUCTS WERE NOT HAZARDOUS AND THERE WAS NO  
10 PROOF.  
11 AND AS THERE STILL ARE TODAY, THERE'S MAGAZINE  
12 ADVERTISING. THIS IS A LIFE MAGAZINE (INDICATING) FROM  
13 FEBRUARY 1971 AND THE BACK PAGE -- THIS IS 1971 -- IS A  
14 MARLBORO AD. JANUARY 23RD, 1970, A MARLBORO AD. "COME TO  
15 WHERE THE FLAVOR IS. COME TO MARLBORO COUNTRY.

16 RED OR LONGHORN 100S. YOU GET A LOT TO LIKE."  
17 AND THAT'S THE KIND OF ADVERTISING PATRICIA WOULD  
18 SEE AND GROW UP WITH. AND THE EVIDENCE WILL SHOW THAT  
19 PATRICIA WATCHED TV, LIKED MOVIES. STARS SMOKED. IT WAS  
20 GLAMOROUS. HUMPHREY BOGART. WOMEN STARS WERE  
SMOKING. AND  
21 THERE WERE ADS ON TV. PEOPLE SMOKED ON TV, PEOPLE  
SMOKED IN  
22 BUILDINGS, THEY SMOKED IN RESTAURANTS, THEY SMOKED  
23 EVERYWHERE.  
24 AND THE ADS DEPICTED THE CIGARETTES AS COOL,  
25 GLAMOROUS, HEALTHY. YOU COULD CLIMB A MOUNTAIN. YOU  
COULD  
26 DO ANYTHING. ATHLETES WERE USED IN ADVERTISING. ATHLETES  
27 WHO RAN MILES, PLAYED BASEBALL AND FOOTBALL STARS.  
28 FRANK GIFFORD, I THINK WHO IS NOW MORE FAMOUS FOR

JUDITH ANN OSSA, CSR NO. 2310

19  
1 BEING KATHY LEE'S WIFE -- I MEAN HUSBAND, AND HIS FOOTBALL  
2 CAREER. ONCE HE WAS A FAMOUS FOOTBALL PLAYER. HE  
3 ADVERTISED BECAUSE SMOKING WAS OKAY.  
4 THE EVIDENCE WILL SHOW THAT THE DEFENDANTS  
5 MANIPULATED THE LEVELS OF NICOTINE IN THEIR CIGARETTES, AND  
6 THEY USED SOMETHING -- AND PHILIP MORRIS WAS REALLY THE  
7 LEADER IN THE AMMONIATION THEORY, IN CHANGING THE  
CHEMICAL  
8 BALANCE IN HOW FAST NICOTINE WOULD BE GOTTEN INTO YOUR  
9 SYSTEM.  
10 AND THE MARLBORO CIGARETTE WAS THE CIGARETTE THAT  
11 USED AMMONIA. AND BECAUSE WITHIN THEMSELVES THEY WERE  
12 COMPETITORS, R.J. REYNOLDS TRIED TO FIGURE OUT WHY  
MARLBORO  
13 WAS DOING BETTER THAN WINSTON AND REVERSE ENGINEERED  
THE  
14 MARLBORO CIGARETTE AND FIGURED OUT IT WAS AMMONIA.  
15 AND PATRICIA, AS IT TURNS OUT, HAD AN ABSOLUTE  
16 CHILDHOOD FEAR OF AMMONIA -- THIS IS LEMON SCENTED  
17 (INDICATING) -- BECAUSE SHE HAD ONCE PLAYED UNDER THE SINK  
18 AND HAD A REACTION. SHE TOOK THE TOP OFF OF THE AMMONIA  
19 BOTTLE AND HAD A CHEMICAL REACTION. AND SHE WAS DEATHLY  
20 AFRAID OF IT.  
21 AND IN ALL THE YEARS THAT SHE SMOKED MARLBORO  
22 CIGARETTES, SHE NEVER KNEW THAT THEY USED AMMONIA. THEY  
23 NEVER PUT THAT ON THEIR PACKAGES.  
24 I WANT TO READ YOU SOMETHING FROM THE 1989  
25 SURGEON GENERAL'S REPORT ABOUT THE CONCEPT OF CHILDREN  
AND  
26 ADOLESCENTS AND STARTING SMOKING, 1989. THE SURGEON  
GENERAL  
27 OF THE UNITED STATES WAS A PEDIATRIC SURGEON, SO HE WAS  
28 VERY -- A PEDIATRIC DOCTOR, SO HE WAS VERY CONCERNED  
ABOUT

JUDITH ANN OSSA, CSR NO. 2310

20  
1 CHILDREN. AND HE SAYS:  
2 "RESEARCH HAS SHOWN THAT ONE-FOURTH OR MORE OF  
3 ALL REGULAR CIGARETTE SMOKERS DIE OF SMOKING-

4 RELATED DISEASES."  
5 HE'S TALKING ABOUT POPULATION.  
6 "IF 20 MILLION OF THE 70 MILLION CHILDREN NOW  
7 LIVING IN THE UNITED STATES SMOKE CIGARETTES AS  
8 ADULTS" -- IT IS ONLY 29 PERCENT -- "AT LEAST 5  
9 MILLION OF THEM WILL DIE OF SMOKING-RELATED  
10 DISEASES. THIS FIGURE SHOULD ALARM ANYONE WHO IS  
11 CONCERNED WITH THE FUTURE HEALTH OF TODAY'S  
12 CHILDREN."  
13 HERE'S WHAT HE SAYS ARE THE TWO FACTORS THAT MAKE  
14 SMOKING AMONG YOUNG PEOPLE A PREEMINENT PUBLIC HEALTH  
15 CONCERN:  
16 "ONE. THE AGE OF INITIATION OF SMOKING AND TWO,  
17 NICOTINE ADDICTION. AS THIS REPORT SHOWS, FOUR-  
18 FIFTHS OF SMOKERS BORN SINCE 1935 STARTED SMOKING  
19 BEFORE AGE 21. THE PROPORTION OF SMOKERS WHO  
20 BEGIN SMOKING DURING ADOLESCENCE HAS BEEN  
21 INCREASING OVER TIME, PARTICULARLY AMONG WOMEN.  
22 "IN THE TEENAGE SMOKING SURVEY CONDUCTED BY THE  
23 DEPARTMENT OF HEALTH, EDUCATION AND WELFARE IN  
24 1979" -- IT'S NOW CALLED HUMAN AND HEALTH  
25 SERVICES -- "RESPONDENTS WERE ASKED" -- IT WAS A  
26 TEENAGE SMOKING SURVEY -- "WHAT WOULD YOU SAY IS  
27 THE POSSIBILITY THAT FIVE YEARS FROM NOW YOU WILL  
28 BE A CIGARETTE SMOKER?" AMONG SMOKERS, HALF

JUDITH ANN OSSA, CSR NO. 2310

21  
1 ANSWERED "DEFINITELY NOT" OR "PROBABLY NOT."  
2 "THIS RESPONSE SUGGESTS THAT MANY CHILDREN AND  
3 ADOLESCENTS WERE UNAWARE OF OR UNDERESTIMATED  
THE  
4 ADDICTIVE NATURE OF SMOKING."  
5 AND THAT'S JUST EXACTLY WHAT PATRICIA DID, AND  
6 EXACTLY WHAT MOST KIDS WHO START SMOKING DO. THEY DO  
NOT  
7 THINK THEY ARE MAKING A LIFETIME COMMITMENT, A LIFETIME  
8 COMMITMENT THAT WILL CAUSE THEIR DEATH. THIS IS 1976  
9 (INDICATING).  
10 MIND YOU, SINCE 1964, THE SURGEON GENERAL OF THE  
11 UNITED STATES HAS COME OUT AND SAID "CIGARETTE SMOKING  
12 CAUSES CANCER AND DISEASE." AND THIS IS INTEROFFICE  
13 CORRESPONDENCE. "WHY PEOPLE START TO SMOKE?"  
14 AND THEY LOOK INTO THE ISSUE, AND THEY ARE  
15 LOOKING AT INFORMATION REPORTED. AND ONE OF THE THINGS  
THEY  
16 SAY IS: "MANY BOYS AND GIRLS START SMOKING TO SHOW THEIR  
17 INDEPENDENCE, AS A SYMBOL OF REVOLT AGAINST  
18 AUTHORITY, TO FEEL SOPHISTICATED AND GROWN-UP, TO  
19 BE ONE OF THE CROWD, TO GAIN SOCIAL STATUS, TO  
20 HAVE SOMETHING TO DO.  
21 "THE ADVERTISERS OF CIGARETTES EXPLOIT THIS URGE  
22 BY CREATING AN IMAGE OF A SMOKER AS AN  
23 OUTSTANDING ATHLETE, A HANDSOME, VIRILE OUTDOOR'S  
24 MAN, A NONCHALANT CAMPUS LEADER, A MAN WHO  
25 SUCCEEDS, A SOPHISTICATED, CHARMING YOUNG WOMAN.  
26 "MANY ACCEPT THE IMAGE CREATED BY CIGARETTE  
27 ADVERTISEMENTS OF CIGARETTE SMOKING AS A SYMBOL OF  
POISE,  
28 SELF-CONFIDENCE AND SOCIAL SUCCESS. BUT ONCE ONE  
BECOMES

1 DEPENDENT ON CIGARETTES, THAT HABITUATION OR ADDICTION  
2 IMPELS DRIVES TO CONTINUE."  
3 NOW, THIS IS A REPORT (INDICATING) OF A  
4 CONFERENCE BY MR. DUNN, WILLIAM DUNN. INTERNALLY AT PHILIP  
5 MORRIS, HE WAS CALLED THE NICOTINE KID. THAT'S BECAUSE  
6 THAT'S WHAT HE LOOKED INTO, WHAT EFFECT NICOTINE HAD.  
7 AND HE'S TALKING ABOUT -- HE STARTS OUT WITH A  
8 JOKE, LIKE MANY SPEAKERS DO. AND HE SAYS:  
9 "IF ONE ASKS THE SMOKER HIMSELF WHY HE SMOKES,  
10 HE IS MOST LIKELY TO SAY 'IT'S A HABIT.'"  
11 IF HE'S INTELLIGENT ENOUGH, HE MIGHT BE MORE TO  
12 THE POINT AND SAY EITHER ONE OF TWO THINGS. "IT'S  
13 STIMULATES ME," OR IT RELAXES ME.  
14 AND NOW WE'RE DEEP INTO OUR TOPIC AND HE'S MAKING  
15 THIS PRESENTATION TO THE OTHER MEMBERS OF THE CIGARETTE  
16 INDUSTRY AT A CONFERENCE.  
17 "THE PRIMARY INCENTIVE TO CIGARETTE SMOKING IS  
18 THE IMMEDIATE SALUTARY EFFECT OF INHALED SMOKE  
19 UPON BODY FUNCTION."  
20 AND THE EVIDENCE WILL SHOW THAT WHEN YOU INHALE A  
21 CIGARETTE, THERE ARE CHANGES IN SKIN TEMPERATURE AND  
CHANGES  
22 IN YOUR BLOOD, CHANGES IN SENSATION. AND NICOTINE, WHEN IT  
23 GOES TO YOUR BRAIN, MAKES CHANGES IN YOUR BRAIN CELLS.  
AND  
24 THEY KNEW THAT.  
25 "CIGARETTE SMOKING IS SO PERVASIVE OF LIFE-STYLE  
26 THAT IT IS INEVITABLE THAT OTHER SECONDARY  
27 INCENTIVES SHOULD BECOME OPERATIVE."  
28 AND HE TALKS ABOUT USING EATING AS AN ANALOGY AND

1 HOW WE HAVE ESTABLISH RITUALS IN THINGS AROUND EATING AND  
2 THEN THOSE RITUALS REINFORCE THE BEHAVIOR, THE EATING.  
3 "IT WOULD BE DIFFICULT FOR ANY OF US TO IMAGINE  
4 THE FATE OF EATING WERE THERE NOT ANY NUTRITIVE  
5 GAIN INVOLVED. AND IT WOULD BE EVEN MORE  
6 PROVOCATIVE TO SPECULATE ABOUT THE FATE OF SEX  
7 WITHOUT ORGASM. I'D RATHER NOT THINK ABOUT IT.  
8 AS WITH EATING AND COPULATING, SO IT IS WITH  
9 SMOKING. THE PHYSIOLOGICAL EFFECT SERVES AS THE  
10 PRIMARY INCENTIVE. ALL OTHER INCENTIVES ARE  
11 SECONDARY."  
12 AND HERE IS WHERE HE GOES ON:  
13 "NO ONE (MARKING DOCUMENT) HAS EVER BECOME A  
14 CIGARETTE SMOKER BY SMOKING CIGARETTES WITHOUT  
15 NICOTINE. MOST OF THE PHYSIOLOGICAL RESPONSES TO  
16 INHALED SMOKE HAVE BEEN SHOWN TO BE NICOTINE  
17 RELATED. DESPITE LOW NICOTINE BRAND ENTRIES,  
18 NONE HAVE CAPTURED A SUBSTANTIAL SEGMENT OF THE  
19 MARKET. WHY THEN IS THERE NOT A MARKET FOR  
20 NICOTINE PER SE TO BE EATEN, SUCKED, DRUNK  
21 INJECTED, INSERTED, OR INHALED AS A PURE  
22 AEROSOL?"  
23 THE ANSWER" -- AND I FEEL QUITE STRONGLY ABOUT

24 THIS -- "IS THE CIGARETTE IS IN FACT AMONG THE  
25 MOST AWE-INSPIRING EXAMPLES OF THE INGENUITY OF  
26 MAN (MARKING DOCUMENT). THE CIGARETTE SHOULD BE  
27 CONCEIVED NOT AS A PRODUCT BUT AS A PACKAGE. THE  
28 PRODUCT IS NICOTINE.

JUDITH ANN OSSA, CSR NO. 2310

24  
1 THE CIGARETTE IS BUT ONE OF THE MANY PACKAGE'S  
2 LAYERS. THERE'S THE CARTON, WHICH CONTAINS THE  
3 PACK, WHICH CONTAINS THE CIGARETTES, WHICH  
4 CONTAINS THE SMOKE. THE SMOKE IS THE FINAL  
5 PACKAGE.  
6 "THE SMOKER MUST STRIP OFF ALL OF THESE  
7 PACKAGING LAYERS TO GET TO THAT WHICH HE SEEKS.  
8 THINK OF THE CIGARETTE PACKAGE AS THE STORAGE  
9 CONTAINER FOR A DAY'S SUPPLY OF NICOTINE.  
10 (MARKING DOCUMENT)" IT'S UNOBTRUSIVELY.  
11 PORTABLE. ITS CONTENTS ARE INSTANTLY  
12 ACCESSIBLE.  
13 "THINK OF THE CIGARETTE AS A DISPENSER FOR A  
14 DOSE UNIT OF NICOTINE. IT IS READILY PREPPED FOR  
15 DISPENSING NICOTINE. ITS RATE OF COMBUSTION  
16 METERS THE DISPENSING RATE SETTING AND UPPER SAFE  
17 LIMIT FOR A SUBSTANCE THAT CAN BE TOXIC IN LARGE  
18 DOSES. AND DISPENSING IS UNOBTRUSIVE TO MOST  
19 ONGOING BEHAVIOR. THINK OF A PUFF OF SMOKE AS  
20 THE VEHICLE OF NICOTINE. A CONVENIENT 35.  
21 MS. CHABER:  
22 MOUTHFUL CONTAINS APPROXIMATELY THE RIGHT AMOUNT  
23 OF NICOTINE.  
24 "THE SMOKER HAS WIDE LATITUDE IN FURTHER  
25 CALIBRATION, PUFF VOLUME, PUFF-INTERVAL  
26 DEPTH AND DURATION OF INHALATION. WE HAVE  
27 RECORDED WIDE VARIABILITY INTAKE AMONG SMOKERS --  
28 AMONG A GROUP OF PACK-A-DAY SMOKERS.

JUDITH ANN OSSA, CSR NO. 2310

25  
1 SOME WILL TAKE IN LESS THAN THE AVERAGE HALF-PACK  
2 SMOKER. SOME WILL TAKE IN MORE THAN THE AVERAGE  
3 TWO-PACK-A-DAY SMOKER.  
4 HIGHLY ABSORBABLE, 97 PERCENT NICOTINE  
5 RETENTION. RAPID TRANSFER. NICOTINE  
6 DELIVERED TO THE BLOODSTREAM ONE TO THREE  
7 MINUTES. NON-NOXIOUS ADMINISTRATION.  
8 SMOKE IS BEYOND QUESTION THE MOST OPTIMIZED  
9 VEHICLE OF NICOTINE AND THE CIGARETTE THE MOST  
10 OPTIMIZED DISPENSER OF SMOKE (MARKING  
11 DOCUMENT).  
12 SO MUCH FOR EXTOLLING THE VIRTUES OF THE ROD.  
13 YOU WILL HEAR FROM DR. RONALD DAVIS -- HE WILL BE HERE  
14 TOMORROW -- FORMERLY FROM THE OFFICE OF SMOKING AND  
HEALTH,  
15 ONE OF THE EDITORS AND AUTHORS OF SEVERAL OF THE  
SURGEON  
16 GENERAL REPORTS. YOU WILL HEAR FROM DR. NEAL BENOWITZ,  
WHO  
17 HAS RECEIVED DISTINGUISHED AWARDS FOR HIS WORK ON

NICOTINE

18 ADDICTION AND WAS ONE OF THE PRIMARY EDITORS OF THE 1988  
19 SURGEON GENERAL'S REPORT ON NICOTINE ADDICTION  
20 (INDICATING).

21 AND THEY WILL TELL YOU THAT NICOTINE IS  
22 ADDICTIVE, THAT THE CIGARETTE IS DESIGNED BY THE COMPANIES  
23 TO KEEP PEOPLE HOOKED ON SMOKING, THAT THEY COULD MAKE  
24 CIGARETTES SAFER. THAT WHEN RESEARCH HAS BEEN DONE --  
25 YOU'LL HEAR FROM SOME OF THE PHILIP MORRIS RESEARCHERS --  
26 THAT THEY WERE WORKING ON THINGS TO MAKE CIGARETTES

SAFER.

27 AND THE RESEARCH WOULD GET STOPPED OR IT WOULDN'T  
28 SEE THE LIGHT OF DAY, BECAUSE THE REALITY IS TO MAKE

JUDITH ANN OSSA, CSR NO. 2310

26

WON'T

1 CIGARETTES SAFER CHANGES THEM. AND IF THERE IS A CHANGE IN  
2 THE LEVEL OF NICOTINE, PEOPLE WON'T SMOKE AND PEOPLE

3 CONTINUE TO BUY THEM.

4 AND THE EVIDENCE WILL SHOW THAT THE INDUSTRY KNEW  
5 THIS ABOUT NICOTINE BACK IN THE '60S, BACK WHEN THE FIRST  
6 SURGEON GENERAL'S REPORT WAS BEING PUT TOGETHER, BACK

WHEN

7 THE SURGEON GENERAL OF THE UNITED STATES THEN PUBLISHED

THAT

8 CIGARETTE SMOKING IS NOT AN ADDICTION, IT'S A HABIT. AND  
9 THEY DIDN'T PROVIDE MORE AND BETTER INFORMATION THAT THEY  
10 HAD AS THE MANUFACTURER THAT THAT WASN'T SO.

11 AND IT TOOK TILL 1988 FOR THE SURGEON GENERAL  
12 (INDICATING) TO GET THAT OUT AND -- TO GET THAT OUT, IN AN  
13 ATTEMPT TO GET IT OUT TO THE PUBLIC.

14 AND THEY DID COME UP WITH LOW-TAR CIGARETTES AND  
15 PATRICIA SWITCHED. AND SHE SWITCHED TO MARLBORO LIGHT

100S

16 (INDICATING). YES, THERE WERE THINGS OUT THERE SAYING  
17 CIGARETTES COULD CAUSE DISEASE. SHE DID HAVE CONCERNS.

AND

18 THE EVIDENCE WILL SHOW THAT SHE ACTUALLY CALLED PHILIP  
19 MORRIS AT A HOT LINE-TYPE THING, A CUSTOMER SERVICE-TYPE  
20 THING AND SAID: "THERE'S ALL THESE THINGS ON TV NOW SAYING  
21 CIGARETTE SMOKING IS REALLY BAD FOR YOU." ALL THE ANTI-  
22 SMOKING HEALTH COMMUNITY ADVERTISING THAT STARTED GOING

ON,

23 TV ADS CAME OFF AND THAT STARTED GOING ON TV SAYING "DON'T  
24 SMOKE. IT'S REALLY BAD. IT REALLY DOES CAUSE ALL THESE  
25 DISEASES."

26 AND SHE WAS CONCERNED, OR WONDERED IF SHE SHOULD  
27 BE CONCERNED. SO SHE CALLS THE MANUFACTURER OF THE

PRODUCT

28 THAT SHE IS USING. AND THEY SAY: "DON'T WORRY. OUR

JUDITH ANN OSSA, CSR NO. 2310

27

SMOKING.

1 SCIENTISTS DON'T THINK THERE'S ANYTHING WRONG WITH

2 BUT IF YOU'RE CONCERNED, SWITCH TOO THE LIGHTS." AND SHE  
3 DID. SO THAT'S NOT TO SAY THAT SOMETIMES SHE WOULD STILL  
4 SMOKE THE RED.



5 AND THE EVIDENCE WILL SHOW THAT ALTHOUGH THE TAR  
6 LEVELS WERE DECREASING, AND THE NICOTINE LEVELS WERE  
7 DECREASING, THAT THE SMOKER, UNBEKNOWNST TO THEM, COULD  
8 ACTUALLY CONTROL HOW MUCH NICOTINE AND TAR THEY WERE  
GETTING  
9 IN. SO THEY COULD GET MORE. LIKE MR. DUNN HAD SAID, PEOPLE  
10 WERE ABLE TO REGULATE IT. THERE'S THESE LITTLE VENTILATION  
11 HOLES IN THE SIDE OF A CIGARETTE. THERE'S LITTLE  
12 VENTILATION HOLES IN THE SIDE OF A CIGARETTE (INDICATING) IT  
13 DOESN'T SAY THAT ANYWHERE. YOU CAN'T REALLY SEE THEM.  
14 BUT YOU LEARN TO HOLD THE CIGARETTE IN SUCH A WAY  
15 THAT IF YOU COVER THE VENTILATION HOLES, YOU GET MORE  
16 NICOTINE. YOU TAKE IN MORE. WHEN YOU MEASURE IT ON THE  
17 GOVERNMENT'S MACHINE, WHICH DOESN'T PUFF CIGARETTES LIKE  
A  
18 PERSON DOES, YOU GET THIS LOWER NUMBER. BUT WHEN YOU  
SMOKE  
19 IT, YOU END UP COMPENSATING FOR WHAT YOU'RE NOT GETTING,  
20 BECAUSE YOUR BODY NEEDS -- AT THIS POINT IN TIME, YOUR BRAIN  
21 NEEDS A CERTAIN LEVEL.  
22 AND YES, PEOPLE CAN QUIT SMOKING. PEOPLE DO QUIT  
23 SMOKING. PEOPLE DO IT EVERY DAY. AND MANY PEOPLE GO  
RIGHT  
24 BACK AND THEY GO RIGHT BACK BECAUSE THEIR BODY, THEIR  
BRAIN  
25 IS PHYSIOLOGICALLY MISSING SOMETHING, SOMETHING IT NEEDS  
AND  
26 CRAVES.  
27 AND SOME PEOPLE ARE FORTUNATE AND THEY SAY: "I'M  
28 NEVER SMOKING AGAIN," AND THEY DON'T PICK UP A PACK OF

JUDITH ANN OSSA, CSR NO. 2310

28  
1 CIGARETTES AGAIN. BUT MOST PEOPLE -- AND THE EVIDENCE WILL  
2 SHOW THAT THE RELAPSE RATES FOR QUITTING ARE TREMENDOUS,  
3 THAT MOST PEOPLE DO NOT AND CANNOT QUIT ON THEIR FIRST  
TRY  
4 OR SECOND TRY. AND NOW THERE ARE AIDS LIKE NICOTINE GUM  
AND  
5 PATCHES AND EVEN SOME MEDICATION TO HELP AFFECT YOUR  
BRAIN  
6 THAT CAN HELP. THE EVIDENCE WILL SHOW IT IS NOT MERELY A  
7 MATTER OF FREE WILL AND FREE CHOICE TO QUIT SMOKING.  
8 AND THE EVIDENCE WILL SHOW THAT PATRICIA TRIED  
9 AND SHE SWITCHED TO THE LIGHTS, BUT ENDED UP GOING FROM  
TWO  
10 PACKS A DAY TO ALMOST THREE, THREE AND A HALF PACKS A DAY.  
11 THAT'S ANOTHER WAY TO COMPENSATE FOR THE AMOUNT OF  
12 NICOTINE. YOU SMOKE LOWER-TAR, LOWER-NICOTINE CIGARETTES  
13 AND END UP SMOKING MORE OF IT BECAUSE YOU NEED THE LEVEL  
OF  
14 NICOTINE.  
15 AND THE EVIDENCE WILL SHOW THAT PATRICIA IS NO  
16 LONGER SMOKING CIGARETTES. SHE QUIT SMOKING. SHE QUIT  
17 SMOKING AT THE END OF 1997. SHE QUIT SMOKING. SHE DID ALL  
18 THE THINGS YOU'RE SUPPOSED TO DO. SHE SET A DATE. SHE SET  
19 A TIME. SHE CLEARED THE HOUSE OF ASHTRAYS. SHE DID ALL OF  
20 THOSE THINGS. AND SHE DID IT AT A TIME WHEN SHE REALLY  
21 WASN'T FEELING VERY WELL.  
22 HER LIFELONG AMBITION IS TO BE A SINGER. AND SHE  
23 IS SOMEONE WHO GOES OUT TO CHARITY EVENTS AND SINGS. SHE

24 DOESN'T TAKE ANY MONEY FOR IT BUT PERFORMS AND SHE LOVES  
25 THAT. THIS IS PATRICIA'S PUBLICITY PHOTO (INDICATING).  
26 AND SHE WAS STARTING TO DISCOVER THAT SHE COULD  
27 ONLY SING NINE SONGS INSTEAD OF 12. AND SHE SAID "I'LL GIVE  
28 IT ANOTHER SHOT."

JUDITH ANN OSSA, CSR NO. 2310

29  
1 WELL, SHE NEVER REALLY HAD A CHANCE TO FIND OUT  
2 WHETHER SHE'D BE SUCCESSFUL THIS TIME, BECAUSE WITHIN A  
3 MONTH -- AND THE EVIDENCE IS THAT THE RELAPSE USUALLY  
OCCURS  
4 SOMEWHERE BETWEEN SIX WEEKS TO TWO MONTHS. OF COURSE,  
THERE  
5 ARE PEOPLE WHO GO BACK TO IT YEARS AFTER THEY'VE STOPPED.  
6 BUT SHE WENT TO HER DOCTOR, BECAUSE SHE WAS  
7 FEELING TERRIBLE, COUGHING, COUGHING UP BLOOD. AND SHE  
WAS  
8 INITIALLY IN DECEMBER OF 1997 DIAGNOSED WITH PNEUMONIA,  
9 WHICH LOOKING AT IT IN HINDSIGHT IT'S CLEAR THAT THAT'S WHAT  
10 WAS GOING ON WAS THE CANCER.  
11 SHE SPENT A PRETTY SICK DECEMBER AND A PRETTY  
12 SICK CHRISTMAS. AND AFTER THE NEW YEAR, SHE WENT TO THE  
13 HOSPITAL. SHE HAD MORE TESTS. THINGS HAPPENED, INCLUDING  
A  
14 FEW MESS-UPS AT THE HOSPITAL IN TERMS OF DAYS WHEN SHE  
WAS  
15 SUPPOSED TO HAVE THINGS DONE. BUT ULTIMATELY, SHE WAS  
16 DIAGNOSED WITH LUNG CANCER.  
17 EVERY ONE OF HER TREATING DOCTORS -- FROM THE  
18 SURGEON WHO DID THE SURGERY AND TALKED TO PATRICIA  
ABOUT  
19 WHAT SHE HAD, TO THE ONCOLOGIST, THE CANCER DOCTOR THAT  
SHE  
20 IS SEEING NOW -- EVERY DOCTOR WHO HAS EVER EXAMINED  
21 PATRICIA, TALKED TO HER, BEEN RESPONSIBLE FOR HER TOTAL  
CARE  
22 SAYS THAT SHE HAS LUNG CANCER, A TYPE OF LUNG CANCER  
CALLED  
23 SMALL CELL CARCINOMA OF THE LUNG. AND SMALL CELL  
CARCINOMA  
24 OF THE LUNG, WHEN YOU LOOK AT CANCERS BETWEEN MEN AND  
WOMEN  
25 SMOKERS, WOMEN SEEM TO GET THAT TYPE OF CANCER MORE  
THAN  
26 MEN.  
27 AND WHEN WOMEN SMOKERS GET THAT TYPE OF CANCER,  
28 IT'S BAD NEWS. AND THE BAD NEWS IS IT'S AN INCURRABLE

JUDITH ANN OSSA, CSR NO. 2310

30  
1 CANCER. IT'S INOPERABLE. PATRICIA HAS BEEN LUCKY SO FAR.  
2 SHE SAW A BIRTHDAY IN NOVEMBER THAT SHE DIDN'T THINK SHE  
3 WOULD SEE. SHE HAS SEEN ANOTHER CHRISTMAS AND ANOTHER  
NEW  
4 YEAR'S. THEY DID CHEMOTHERAPY. THEY DID RADIATION.  
5 AND THE GOOD NEWS ABOUT THIS KIND OF CANCER IS IT  
6 REACTS VERY QUICKLY TO RADIATION AND CHEMOTHERAPY. SO  
AFTER

AT 7 THE CHEMOTHERAPY AND THE RADIATION, PATRICIA, IF YOU LOOK  
8 HER X-RAYS, IT LOOKS LIKE IT'S GONE. BUT YOU WILL HEAR FROM  
9 HER ONCOLOGIST THAT IT'S NOT GONE, THAT THIS IS WHAT'S  
10 CALLED A REMISSION.  
11 AND SHE IS A LUCKY PERSON TO HAVE THAT  
12 REMISSION. MOST PEOPLE WITH THIS KIND OF CANCER AREN'T  
THAT 13 LUCKY. MANY DIE. THE AVERAGE -- IF YOU LOOK AT THE PEOPLE  
14 WHO LIVE THE LONGEST AND THE SHORTEST, IT IS ABOUT SIX  
15 MONTHS. SHE'S STILL HERE WITH US. THE EVIDENCE WILL SHOW  
16 THAT PATRICIA KNOWS AND FEELS THAT THIS IS TEMPORARY,  
17 BECAUSE THE EVIDENCE WILL SHOW THAT THIS CANCER  
DISAPPEARS 18 QUICKLY OR APPARENTLY AND YOU GO INTO REMISSION QUICKLY,  
BUT 19 INEVITABLY IT COMES BACK. AND WHEN IT COMES BACK, IT  
20 USUALLY SPREADS TO OTHER PARTS OF YOUR BODY. IT USUALLY  
21 SPREADS TO YOUR BONE OR TO YOUR BRAIN. AND THE EVIDENCE  
22 WILL SHOW THAT EVERY TREATING DOCTOR PATRICIA HAS SEEN  
SAYS 23 SHE HAS LUNG CANCER.  
24 AND THE LAST LIE THAT I WANT TO TALK TO YOU  
25 ABOUT --  
26 MR. OHLEMEYER: OBJECTION, YOUR HONOR. THAT'S  
27 ARGUMENTATIVE.  
28 THE COURT: I DIDN'T EVEN HEAR IT.

JUDITH ANN OSSA, CSR NO. 2310

31  
1 MS. CHABER: THE EVIDENCE WILL SHOW THAT THE  
2 DEFENDANT'S EXPERTS CLAIM THAT THIS IS --  
3 MR. OHLEMEYER: EXCUSE ME, YOUR HONOR. I THINK  
4 THIS IS AN INAPPROPRIATE OPENING STATEMENT. UNTIL I PUT A  
5 CASE ON, TELLING THE JURY WHAT THE LAWYERS THINK MY  
EVIDENCE 6 IS GOING TO BE IS A SENSE OF ARGUMENT.  
7 THE COURT: WELL, IF YOU WANT TO HAVE A VERY  
8 BRIEF SIDEBAR, WE CAN TALK ABOUT IT JUST VERY, VERY  
9 BRIEFLY.  
10 (COURT AND COUNSEL CONFER OUTSIDE  
11 THE PRESENCE OF THE JURY)  
12 THE COURT: WE'RE BACK ON THE RECORD. YOU MAY  
13 PROCEED.  
14 MS. CHABER: THANK YOU. THE EVIDENCE WILL SHOW  
15 THAT DEFENDANT'S EXPERTS ARE GOING TO SAY THAT PATRICIA  
DOES 16 NOT HAVE LUNG CANCER. SHE HAS A SMALL CELL CANCER, BUT  
IT'S 17 NOT LUNG CANCER. IT'S A CANCER FROM THE CENTER OF HER  
BODY 18 IN THE MEDIASTINUM, A GLAND CALLED THE THYMUS GLAND, THAT  
19 SHE HAS THYMIC CANCER, THYMIC SMALL CELL CANCER.  
20 NOT ONE OF THESE EXPERTS EVER SAW PATRICIA,  
21 EXAMINED PATRICIA AND ARE NOT RESPONSIBLE FOR HER CARE.  
AND 22 I WILL BRING IN EXPERTS AS WELL. IN ADDITION TO THE  
23 TREATING PHYSICIANS, YOU WILL HEAR FROM A RENOWNED  
24 PATHOLOGIST NAMED SAMUEL HAMMER, WHO HAS PUBLISHED  
PATHOLOGY 25 TEXTBOOKS THAT ARE RELIED ON IN HOSPITALS, UNIVERSITIES,

26 MEDICAL COLLEGES.  
27 AND HE WILL SAY THAT THIS IS A CLASSIC  
28 PRESENTATION, A COMMON PRESENTATION OF LUNG CANCER,

THAT

JUDITH ANN OSSA, CSR NO. 2310

32

1 THYMIC CANCERS ARE SO RARE THAT THERE ARE SOMEWHERE  
AROUND 2 200 REPORTED CASES IN ALL OF THE MEDICAL LITERATURE. ABOUT  
3 140,000 LUNG CANCERS ARE DIAGNOSED EVERY YEAR OF WHICH -- I  
4 COULD BE OFF A LITTLE ON MY NUMBERS -- 60,000 OF WHICH ARE  
5 OF THE SMALL CELL VARIETY. FOR THYMIC CANCERS, THERE'S  
EVEN 6 A SMALLER NUMBER THAN THAT 200 THAT ARE OF THE SMALL CELL  
7 VARIETY.  
8 WE'LL BRING YOU A PULMONARY DOCTOR, AN EXPERT  
9 ALTA BATES MEDICAL CENTER IN BERKELEY, WHO HAS DIAGNOSED  
AND 10 DEALT WITH PEOPLE WITH LUNG CANCER HANDS-ON, DAY IN AND  
DAY 11 OUT. AND HE WILL SAY "THIS IS A LUNG CANCER. THAT'S WHAT  
12 IT IS. THAT'S WHAT THE PRESENTATION WAS. THERE IS NO  
13 DOUBT."  
14 AND THE EVIDENCE WILL SHOW THAT PHILIP MORRIS  
15 KNEW WHAT THEY WERE DOING WHEN THEY ADVERTISED AND  
PROMOTED 16 THE MARLBORO CIGARETTES PATRICIA STARTED SMOKING, WHICH  
17 EVERY TREATING DOCTOR AND THE EXPERTS I'M GOING TO  
PRESENT 18 YOU WILL TELL YOU CAUSED HER LUNG CANCER.  
19 THEY KNEW THAT AS A 15 YEAR OLD, 16 YEAR OLD, 17  
20 YEAR OLD, THAT SHE WOULD MAKE BAD CHOICES. THEY COUNT ON  
21 THAT. THEY KNEW THAT THEY HAD -- THAT MARLBORO HAS FOR  
MANY 22 YEARS HAD ITS HIGHEST MARKET PENETRATION AMONG YOUNGER  
23 SMOKERS.  
24 "MOST OF THESE STUDIES" -- NOW THEY'RE TALKING  
25 ABOUT OUTSIDE STUDIES, THE NATIONAL TRACKING  
26 STUDY THAT LOOK AT WHO SMOKES WHAT AND WHAT  
27 BRANDS -- "HAVE BEEN RESTRICTED TO PEOPLE AGE  
28 18. BUT MY OWN DATA" -- AND THIS IS WITHIN

JUDITH ANN OSSA, CSR NO. 2310

33

1 PHILIP MORRIS -- "WHICH INCLUDES YOUNGER  
2 TEENAGERS, SHOWS EVEN HIGHER MARLBORO MARKET  
3 PENETRATION AMONG 15 TO 17 YEAR OLDS. THE  
4 TEENAGE YEARS ARE ALSO IMPORTANT BECAUSE THOSE  
5 ARE THE YEARS DURING WHICH MOST SMOKERS BEGIN TO  
6 SMOKE, THE YEARS IN WHICH THE INITIAL BRAND  
7 SELECTIONS ARE MADE AND THE PERIOD IN THE LIFE  
8 CYCLE IN WHICH CONFORMITY TO PEER GROUP PRESSURES  
9 IS THE GREATEST."  
10 AND PATRICIA WILL TELL YOU THAT WHEN SHE WAS IN  
11 HIGH SCHOOL, THE GIRLS GOT TOGETHER OUTSIDE THE SCHOOL  
AT A 12 SCHOOL DANCE. SOMEONE HAD GOTTEN A CIGARETTE FROM  
THEIR

13 MOM. THEY ALL PASSED IT AROUND. IT DIDN'T TASTE VERY  
14 GOOD. A COUPLE OF THEM GOT A LITTLE SICK. THE EVIDENCE  
15 WILL SHOW THAT THE ADVERTISING, THE CULTURE, EVERYTHING  
16 AROUND HER WAS SAYING "IT'S OKAY TO SMOKE WHEN YOU'RE  
17 GROWN-UP." AND THEY KNOW THAT. THEY KNOW AT 15, 16, 17  
18 YEARS OLD THEY WANT TO GROW UP.  
19 MR. OHLEMEYER: YOUR HONOR, THIS IS  
20 ARGUMENTATIVE.  
21 MS. CHABER: IT'S FROM DOCUMENTS.  
22 THE COURT: GO AHEAD. GO AHEAD AND CONTINUE.  
23 AND IF YOU HAVE AN OBJECTION, STATE IT AGAIN. I DON'T THINK  
24 IT'S REACHED THE LEVEL OF ARGUMENT YET. GO AHEAD.  
25 MS. CHABER: AND THEY KNOW FROM LOOKING AT  
26 RESEARCH, FROM DOING THEIR OWN RESEARCH THAT MARLBORO  
27 CIGARETTES APPEAL TO PEOPLE, TEENAGERS WHO WANT  
28 INDEPENDENCE -- REMEMBER, THE MARLBORO MAN IS

INDEPENDENT

JUDITH ANN OSSA, CSR NO. 2310

34

1 OUT THERE -- THAT IT APPEALS TO PEOPLE WHO REJECT  
2 AUTHORITY.  
3 AND PATRICIA, SHE WILL TELL YOU, WAS NOT A  
4 PERFECT STUDENT. SHE DROPPED OUT OF SCHOOL, RAN OFF, GOT  
5 MARRIED, HAD A CHILD, MADE LIFE CHOICES, LIKE A LIFE CHOICE  
6 TO GET MARRIED THAT WAS SUPPOSED TO BE FOREVER. IT DIDN'T  
7 WORK OUT TO BE A VERY GOOD CHOICE. AND SHE RAISED HER  
8 DAUGHTER STAR BY HERSELF.  
9 SHE MADE OTHER CHOICES. SHE HAD ANOTHER DAUGHTER  
10 WHO WAS EDUCATIONALLY HANDICAPPED. AND SHE IS AN  
11 INDEPENDENT PERSON, AND SHE WANTED TO BE AN INDEPENDENT  
12 PERSON. AND SHE JUST THOUGHT IT WAS THE COOLNESS THING  
13 SMOKE. SHE SAW ALL THE ADS. SHE LOVED THE ADS. SHE LOVED  
14 THE MOVIES. SHE LOVED THE GLAMOUR OF IT. AND SHE STARTED  
15 SMOKING MARLBOROS BECAUSE OF A BOY, BECAUSE THE BOY  
16 HAD A CRUSH ON SMOKED MARLBOROS AND HE REMINDED HER OF  
17 MARLBORO MAN.  
18 AND WHEN SHE WAS MARRIED AT OTHER TIMES -- AND  
19 SHE DID WHEN SHE WAS MARRIED TRY TO SMOKE THEIR BRANDS  
20 CIGARETTES, WHICH DIDN'T WORK OUT, THE MARRIAGES OR THE  
21 BRANDS. AND SHE ALWAYS WENT BACK TO THE BRAND OF  
22 INITIATION, THE MARLBOROS (INDICATING).  
23 THE COURT: LET US KNOW WHEN YOU GET TO A GOOD  
24 SPOT FOR OUR LUNCH.  
25 MS. CHABER: THIS IS FINE.  
26 THE COURT: IS THIS GOOD?  
27 MS. CHABER: YES.  
28 THE COURT: OKAY. JURORS, AS YOU KNOW, IT'S

TO

THAT SHE

THE

OF

JUDITH ANN OSSA, CSR NO. 2310

35

1 CRITICAL THAT YOU CONTINUE TO FOLLOW THE ADMONITION OVER  
2 LUNCH HOUR. HAVE A GOOD LUNCH AND WE'LL RESUME AT 1:30.  
3 (LUNCH RECESS TAKEN AT 11:58 A.M.)

THE

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JUDITH ANN OSSA, CSR NO. 2310

36

RECEIVED

WHICH

SAYS

THAT I

WILLING

1 AFTERNOON SESSION 1:40 P.M.  
2 THURSDAY, JANUARY 7, 1999  
3 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
4 CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY)  
5 THE COURT: WE'RE ON THE RECORD IN CHAMBERS.  
6 THE COURT HAS READ TO COUNSEL A NOTE THAT WE HAVE  
7 FROM MR. JUROR NO. 10, MR. ZAMANI, IN WHICH HE TELLS US THAT  
8 HE IS ON PRESCRIPTION MEDICATION, THE GENERIC NAME OF  
9 IS -- I THINK IT'S B-U-P-R-O-P-I-O-N, AND THE COMMERCIAL  
10 NAME IS Z-Y-B-A-N, I BELIEVE.  
11 AND HIS NOTE GOES ON TO SAY THAT HE WAS GIVEN  
12 THESE MEDICATIONS ON JANUARY 4TH OF THIS YEAR. AND HE  
13 THIS:  
14 "DUE TO THE SIDE EFFECTS OF THIS MEDICATION, I  
15 AM FINDING IT DIFFICULT TO CONCENTRATE AND AM  
16 EXPERIENCING SOME DIZZINESS AND NAUSEA AS WELL AS  
17 HEADACHES. AT THIS TIME I'M ASKING THAT THE  
18 COURT EXCUSE ME FROM BEING A JUROR AS I FEEL MY  
19 PERFORMANCE WILL NOT BE BENEFICIAL TO THE  
20 PLAINTIFF OR THE DEFENDANT." END OF NOTE.  
21 AND AFTER A DISCUSSION WITH COUNSEL OFF THE  
22 RECORD, I UNDERSTAND THAT YOUR JOINT REQUEST TO ME IS  
23 NOT EXCUSE HIM AT THIS TIME, BUT INSTEAD CALL HIM IN ON THE  
24 RECORD IN CHAMBERS AND ASK HIM IF HE WOULD BE WILLING TO  
25 STAY WITH US TODAY, COME BACK TOMORROW AND TRY IT. AND IF  
26 HE HAS FURTHER PROBLEMS TOMORROW, THAT WE WOULD BE  
27 TO REVISIT THE SUBJECT WITH HIM AT THAT TIME.  
28 IS THAT SO STIPULATED?

1 MS. CHABER: YES.  
2 MR. OHLEMEYER: SO STIPULATED.  
3 THE COURT: WE'LL DO THAT, PURSUANT TO THE  
4 STIPULATION.  
5 (DISCUSSION OFF THE RECORD)  
6 (MR. ZAMANI ENTERED THE CHAMBERS AREA)  
7 THE COURT: HI, MR. ZAMANI. HAVE A SEAT,  
8 PLEASE. WE'RE ON THE RECORD IN CHAMBERS WITH MR. ZAMANI.  
9 OBVIOUSLY, I HAVE CALLED YOU IN ABOUT YOUR NOTE.  
10 MR. ZAMANI, WHAT I WOULD LIKE TO ASK YOU TO DO,  
11 IF YOU FEEL THIS ISN'T GOING TO IMPOSE A BURDEN ON YOUR  
12 HEALTH OR YOUR COMFORT LEVEL, IS TO ASK YOU TO STAY WITH  
13 TODAY AND COME IN TOMORROW.  
14 JUROR NO. 10: SURE.  
15 THE COURT: LET'S SEE HOW YOU FEEL. MAYBE  
16 THINGS WILL PICK UP AND YOU'LL FEEL BETTER. IF AT SOMETIME  
17 TOMORROW YOU START FEELING THAT THIS IS GOING TO BE TOO  
18 OR TOO DIFFICULT, THEN GIVE ME ANOTHER NOTE AND I'LL CALL  
19 YOU IN AND WE'LL ADDRESS IT IN MORE DETAIL.  
20 JUROR NO. 10: SURE.  
21 THE COURT: DOES THAT SOUND LIKE A REASONABLE  
22 THING TO DO?  
23 JUROR NO. 10: SURE. IT IS.  
24 THE COURT: YOU ARE WILLING TO DO THAT AND YOU  
25 WILL DO YOUR BEST TO PAY ATTENTION TODAY?  
26 JUROR NO. 10: I WOULD DO THAT.  
27 THE COURT: OKAY. THANK YOU. AND THEN LET ME  
28 KNOW TOMORROW IF YOU ARE NOT FEELING TOO WELL, AND WE'LL

US

MUCH

1 TALK ABOUT IT THEN.  
2 JUROR NO. 10: SURE.  
3 THE COURT: IF I DON'T HEAR FROM YOU, I WILL  
4 ASSUME THAT YOU ARE ON THE MEND AND YOU ARE FEELING  
5 OKAY?  
6 JUROR NO. 10: THANK YOU, YOUR HONOR.  
7 THE COURT: THANK YOU.  
8 (MR. ZAMANI LEFT THE CHAMBERS AREA)  
9 THE COURT: LET ME JUST ASK BOTH COUNSEL ARE YOU  
10 SATISFIED WITH THE WAY IT'S BEEN HANDLED? WE SHOULD LEAVE  
11 MR. ZAMANI ON THE JURY THE WAY WE HAD INDICATED EARLIER?  
12 MS. CHABER: YES.  
13 MR. OHLEMEYER: YES.  
14 THE COURT: WE'LL DO THAT. THANK YOU.  
15 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
16 THE COURTROOM, IN THE PRESENCE OF THE JURY,  
17 AT 1:45 P.M.)  
18 THE COURT: GOOD AFTERNOON, EVERYBODY, INCLUDING  
19 THOSE I CAN'T SEE.  
20 AND MR. CHABER, YOU MAY CONTINUE.  
21 MS. CHABER: THANK YOU, YOUR HONOR.  
22 I WANTED TO TALK JUST A LITTLE BIT ABOUT WHAT

BETTER.

1988

AND

23 SOME OF THE WITNESSES ARE GOING TO TALK ABOUT. DR. NEAL  
24 BENOWITZ, WHO I INDICATED WAS ONE OF THE AUTHORS OF THE  
25 SURGEON GENERAL'S REPORT ON ADDICTION, IS GOING TO COME  
26 TALK ABOUT BOTH ADDICTION IN GENERAL AND ADDITION WITH  
27 RESPECT TO PATRICIA.  
28 AND IT'S HIS CONCLUSION, A PERSON WHO

JUDITH ANN OSSA, CSR NO. 2310

39

OF

1 SPECIALIZES, HAS WRITTEN ABOUT IT, PRESENTED TO ALL SORTS  
2 ASSOCIATIONS, SCIENTISTS, OTHER DOCTORS, CONGRESS, THAT  
3 PATRICIA WAS INDEED ADDICTED TO SMOKING, IS INDEED ADDICTED  
4 TO SMOKING, EVEN NOW PATRICIA CRAVES CIGARETTES. SHE GETS  
5 UP ON A DAILY BASIS AND THE FIRST THING SHE THINKS OF BEFORE  
6 SHE GETS FULLY AWAKE IS "I'VE GOT TO GO GRAB A CIGARETTE."  
7 AND SHE HAS TO FIGHT THAT ALL DAY LONG.

WAS

8 HER FORMER HUSBAND, FLOYD HENLEY, WE HAVE TAKEN  
9 HIS DEPOSITION. HE LIVES OUT OF THE STATE. AND HE'S A  
10 SUBSTANCE ABUSE COUNSELOR. AND HE SAYS THAT PATRICIA

ON

11 ADDICTED TO CIGARETTES.  
12 CIGARETTES ARE A LEGAL PRODUCT, AND I DON'T WANT  
13 YOU TO THINK I'M SUGGESTING ANYTHING ELSE. THEY ARE  
14 REGULATED WITH RESPECT TO WARNINGS. THE WARNING THAT IS

THOSE

15 THE PACK IS THE WARNING THAT IS TO BE GIVEN, AND WE HAVE NO  
16 CLAIM ABOUT THIS WARNING AFTER 1970. BUT THERE ARE OTHER  
17 WAYS -- AND IT'S NOT A REGULATED PRODUCT -- AND ONE OF

CANNOT

18 RELATES TO THE ADDICTION ISSUE, TO THE NICOTINE.  
19 THE EVIDENCE WILL SHOW THAT THE DEFENDANTS KNOW  
20 THAT IF THEY CALL CIGARETTE A DRUG, LIKE MR. DUNN DID, THE  
21 DELIVERY DEVICE FOR NICOTINE, AND THEY ACKNOWLEDGE THAT  
22 NICOTINE IS A DRUG, IT WILL BE REGULATED BY THE FOOD AND  
23 DRUG ADMINISTRATION, THE FDA. AND THEY WILL NOT AND

THIS

24 ALLOW THAT.  
25 AND TO THIS DAY -- I KNOW WE'VE BEEN BACK HERE IN  
26 THE '50S AND '60S, '70S (INDICATING). BUT AS OF 1994, WHEN  
27 THEY SWORE TO TELL THE TRUTH IN FRONT OF CONGRESS ON  
28 ISSUE, EVERY ONE OF THE TOBACCO COMPANIES' EXECUTIVE

JUDITH ANN OSSA, CSR NO. 2310

40

DRUGS.

IN

DANGERS

1 OFFICERS SAID "IT'S NOT ADDICTIVE. IT'S NOT A DRUG."  
2 THE NICOTINE SUBSTITUTE PRODUCTS, PATCHES, GUM,  
3 INHALERS, THOSE ARE REGULATED. THOSE ARE CONSIDERED  
4 THE PUBLIC WAS BEING TOLD INFORMATION. THERE WERE THINGS  
5 NEWSPAPERS. THERE WERE THINGS BEING SAID ABOUT THE  
6 OF SMOKING. THERE IS NO QUESTION ABOUT THAT.  
7 PATRICIA WASN'T AWARE, AS SHE SHOULD HAVE BEEN.  
8 MAYBE SHE SHOULD HAVE KNOWN MORE. THE COMPANIES WERE



SAYING

9 THESE PRODUCTS WERE NOT HARMFUL.  
10 AND I WANT TO PLAY ONE OTHER SHORT TAPE. YOU'RE  
11 GOING TO SEE TWO DIFFERENT PEOPLE, ONE, HELMUT WAKEHAM,

AND

12 THE OTHER, JAMES BOWLING. THEY ARE BOTH PHILIP MORRIS  
13 EMPLOYEES. MR. BOWLING WAS A VICE PRESIDENT AND MR.

WAKEHAM

14 WAS A DIRECTOR OF RESEARCH.

15 MS. WHITE: TURN THE TV ON.

16 MS. CHABER: I HAVE TO TURN THE TV ON. THANK  
17 YOU.

18 (VIDEOTAPE PLAYED)

19 MS. CHABER: NOW, YOU WILL NOT HEAR ANY EVIDENCE  
20 THAT ANY DOCTOR TOLD PATRICIA TO QUIT SMOKING. THEY DID  
21 NOT. IN FACT, DOCTORS SMOKED TOO. PATRICIA ACTUALLY  
22 RECALLS THE TIME WHEN THEY WERE ASHTRAYS IN DOCTORS'

WAITING

23 ROOMS. AND MAYBE SHE SHOULD HAVE BELIEVED AND LISTENED  
24 BETTER, BUT SHE CHOSE TO BELIEVE THE COMPANY. SHE CHOSE

TO

25 BELIEVE THE MANUFACTURER OF THE PRODUCT THAT THEY

WOULD NOT

26 BE SELLING HER SOMETHING THAT WOULD KILL HER. SHE CHOSE

TO

27 BELIEVE THAT THEY WERE THE ONES THAT WERE RIGHT AND THE  
28 DOCTORS WERE WRONG.

JUDITH ANN OSSA, CSR NO. 2310

41

1 AND FOR THAT SHE WILL TAKE RESPONSIBILITY. SHE  
2 HAS TAKEN RESPONSIBILITY. SHE HAS NO CHOICE BUT TO TAKE  
3 RESPONSIBILITY. PHILIP MORRIS MADE A FREE CHOICE TO DECEIVE  
4 THE PUBLIC, TO CONCEAL INFORMATION --

5 MR. OHLEMEYER: OBJECTION, YOUR HONOR. THIS IS  
6 ARGUMENT.

7 THE COURT: SUSTAINED.

8 MS. CHABER: THE EVIDENCE WILL SHOW THAT THEY  
9 MISLED THE PUBLIC, THEY DECEIVED THE PUBLIC, THEY DECEIVED  
10 THE PUBLIC HEALTH COMMUNITY AND THAT THEY DID IT FOR ONE  
11 REASON AND ONE REASON ONLY. THEY DIDN'T CARE ABOUT THE  
12 HEALTH AND SAFETY --

13 MR. OHLEMEYER: YOUR HONOR, THIS IS STILL  
14 ARGUMENT. I OBJECT TO IT.

15 THE COURT: SUSTAINED.

16 MS. CHABER: AT THE END OF THIS TRIAL, WE'LL ASK  
17 YOU FOR A VERDICT ASKING PHILIP MORRIS TO SHARE THE  
18 RESPONSIBILITY WITH PATRICIA. THANK YOU.

19 THE COURT: OKAY. I THINK, JURORS, WHAT I'M  
20 GOING TO DO IS GIVE YOU A RECESS HERE BEFORE WE START

WITH

21 THE DEFENSE'S OPENING STATEMENT SO THAT MATTERS CAN BE  
22 REARRANGED ONCE AGAIN IN THE COURTROOM.

23 AND EVEN THOUGH WE HAVE ONLY BEEN HERE FOR A  
24 SHORT PERIOD OF TIME, I'M GOING TO GIVE YOU A 20-MINUTE  
25 RECESS UNTIL 2:15. AND THEN WE'LL HAVE THE DEFENSE  
26 COUNSEL'S OPENING STATEMENT. AND WHEN THAT'S DONE, WE'LL  
27 RECESS FOR THE DAY. SO WE'LL SEE YOU BACK AT 2:15. AND  
28 PLEASE CONTINUE TO FOLLOW THE ADMONITION.

DEFENDANT OPENING STATEMENT BY MR. OHLEMEYER

1 (RECESS TAKEN FROM 1:55 TO 2:25 P.M.)

2 THE COURT: WE'RE BACK ON THE RECORD. AND MR.  
3 OHLEMEYER, YOU MAY PROCEED.4 MR. OHLEMEYER: THANK YOU, YOUR HONOR. MAY IT  
5 PLEASE THE COURT AND COUNSEL. WHAT I WANT TO DO FOR THE  
6 NEXT HOUR OR SO IS TALK TO YOU ABOUT MANY OF THE SAME

THINGS

7 MS. CHABER DID, AND TELL YOU ABOUT THE EVIDENCE AND SOME

OF

8 THE ISSUES THAT YOU HAVE ALREADY HEARD ABOUT.

9 FIRST IS PATRICIA HENLEY. THIS IS IN FACT A CASE  
10 BROUGHT BY PATRICIA HENLEY. MS. CHABER REPRESENTS

PATRICIA

11 HENLEY. AND THAT'S WHAT WE'RE HERE TO DECIDE IS THE CLAIMS  
12 THAT MS. HENLEY HAS AGAINST PHILIP MORRIS.13 AND THOSE CLAIMS, AS WE SAID YESTERDAY, YOU MAY  
14 FIND ARE A LITTLE NARROWER OR LESS COMPLICATED THAN SOME

OF

15 THE THINGS YOU MAY READ OR SEE OR HEAR ABOUT TOBACCO IN  
16 OTHER ASPECTS OF YOUR LIFE.17 ONE OF THE THINGS YOU ARE GOING TO HAVE TO DECIDE  
18 AT THE END OF CASE IS WHETHER MS. HENLEY IS ENTITLED TO  
19 MONEY DAMAGES BECAUSE SHE SMOKED MARLBORO CIGARETTES.

AND

20 YOU ARE GOING TO HEAR A LOT ABOUT MS. HENLEY THROUGHOUT

THE

21 CASE. WE KNOW A LOT ABOUT MS. HENLEY ALREADY, BECAUSE

SHE

22 WAS DEPOSED HER IN THE CASE. SHE WAS MADE AVAILABLE FOR  
23 QUESTIONS THAT WE COULD ASK HER AND HER LAWYER COULD

ASK HER

24 UNDER OATH. AND SHE WILL PROBABLY TESTIFY AGAIN AT TRIAL  
25 AND YOU WILL HEAR SOME MORE ABOUT HER.26 BUT WHAT YOU WILL HEAR ABOUT MS. HENLEY IS THAT  
27 SHE WAS A WOMAN WHO MADE A LOT OF DECISIONS THROUGHOUT

HER

28 LIFE. AND SOME OF THEM WERE HARD DECISIONS. AND SHE HAD

TO

1 DO SOME THINGS IN HER LIFE, EXERCISE CONTROL OVER THINGS IN  
2 HER LIFE. SHE GOT MARRIED EARLY. SHE HAD CHILDREN. SHE  
3 HAD TO RAISE THOSE CHILDREN. SHE ENDED UP RUNNING HER

OWN

4 BUSINESS. SHE LEARNED HOW TO RUN A BUSINESS AND RAN IT

FOR

5 HERSELF IN ORDER TO SUPPORT HERSELF.

6 SHE ALSO TOOK RESPONSIBILITY FOR THINGS AND  
7 DECISIONS SHE MADE. YOU WILL HEAR THAT -- AS YOU ALREADY  
8 HEARD -- SHE WAS MARRIED. SHE WAS DIVORCED. AND

THROUGHOUT

9 THE TIME THAT SHE WORKED AND RAISED HER CHILDREN, SHE WAS  
10 REQUIRED TO MAKE THESE KINDS OF DECISIONS.11 NOW, ONE THING I WANT TO SAY ABOUT THIS TOO IS  
12 THAT SYMPATHY IS A NATURAL EMOTION --

13 MS. CHABER: OBJECTION, YOUR HONOR. THAT'S

14 ARGUMENT.  
15 THE COURT: SUSTAINED.  
16 MR. OHLEMEYER: YOU WILL HEAR EVIDENCE IN THE  
17 CASE ABOUT MS. HENLEY AND THE CHOICES SHE MADE. YOU ARE  
18 GOING TO HEAR THAT SHE WAS A MARLBORO SMOKER. AND AS  
MS.  
19 CHABER TOLD YOU, MARLBORO IS A CIGARETTE SOLD BY PHILIP  
20 MORRIS.  
21 THE SALE OF CIGARETTES ARE LEGAL IN THIS COUNTRY  
22 AND CIGARETTES ARE INDEED REGULATED. THE FEDERAL TRADE  
23 COMMISSION REGULATES TO A CERTAIN EXTENT THE  
ADVERTISEMENT  
24 OF CIGARETTES AND REQUIRES THAT TAR AND NICOTINE DELIVERY  
OF  
25 CIGARETTES BE DISCLOSED IN CIGARETTE ADVERTISEMENTS.  
26 EACH YEAR, CIGARETTE COMPANIES GIVE THE  
27 DEPARTMENT OF HEALTH AND HUMAN SERVICES A LIST OF  
28 INGREDIENTS AND THE FLAVORINGS THEY ADD TO TOBACCO WHEN  
THEY

JUDITH ANN OSSA, CSR NO. 2310

44

1 MAKE CIGARETTES. AND THE DEPARTMENT OF HEALTH AND HUMAN  
2 SERVICES REVIEWS THAT LIST AND IS SUPPOSED TO REPORT TO  
3 CONGRESS ABOUT ANYTHING ON THAT LIST THAT THEY THINK IS A  
4 PROBLEM.  
5 AND EACH OF THE YEARS THAT LIST HAS BEEN GIVEN TO  
6 THE DEPARTMENT OF HEALTH AND HUMAN SERVICES THEY'VE  
NEVER  
7 RAISED AN ISSUE ABOUT ANYTHING THAT'S ON THE LIST, INCLUDING  
8 AMMONIA.  
9 NOW, YOU ARE GOING TO HEAR A LITTLE BIT ABOUT  
10 AMMONIA IN THE CASE. LET ME JUST SAY THIS. AMMONIA IS A  
11 NATURAL PART OF TOBACCO. WHEN TOBACCO GROWS OUT OF  
THE  
12 GROUND, THERE IS AMMONIA IN IT. THERE ARE OTHER WAYS THAT  
13 AMMONIA IS USED IN CIGARETTES AND IS BAKED INTO OTHER  
THINGS  
14 PEOPLE EAT, THAT SUBSTANCE. THE FACT THAT AMMONIA IS ON  
15 THAT LIST IS PART OF WHAT'S GIVEN TO THE DEPARTMENT OF  
16 HEALTH AND HUMAN SERVICES.  
17 THERE ARE WARNINGS ON CIGARETTE PACKAGES, AND IN  
18 CIGARETTE ADVERTISEMENTS, AS MS. CHABER TOLD YOU. AND  
19 CONGRESS WRITES THE WARNINGS AND SAYS HOW BIG THEY'RE  
20 SUPPOSED TO BE AND WHERE THEY ARE SUPPOSED TO BE. THE  
FIRST  
21 WARNINGS WERE PUT ON PACKAGES IN 1966. THEY WERE  
CHANGED IN  
22 1969. AND THEN IN 1984, CONGRESS DETERMINED THAT THERE  
23 SHOULD BE FOUR DIFFERENT WARNINGS AND THEY ROTATE THEM.  
24 THERE'S A PLAN FOR HOW MANY MONTHS OR WHAT PARTS OF THE  
YEAR  
25 THESE WARNINGS ARE ON THE PACKAGES.  
26 MS. HENLEY SMOKED CIGARETTES STARTING IN THE  
27 EARLY 1960S, I THINK ABOUT '62 OR '63. SO SHE CERTAINLY  
28 SMOKED CIGARETTES -- FOR MOST OF THE TIME SHE WAS  
SMOKING,

JUDITH ANN OSSA, CSR NO. 2310

ONLY

1 THEY HAD THESE WARNINGS ON THE PACK. IF SHE ONLY SAW THEM  
2 TWICE A DAY, SHE HAD TO HAVE SEEN THEM 14 TIMES A WEEK,  
3 ALMOST 700 TIMES A YEAR. OVER THE TIME SHE SMOKED, 25,000  
4 TIMES SHE WOULD HAVE SEEN ONE OF THESE WARNINGS IF SHE

WARNINGS,

SHE

5 SAW THEM TWICE A DAY WHILE SHE WAS A SMOKER.  
6 AND SHE'LL TESTIFY, AND SHE HAS TOLD US AT HER  
7 DEPOSITION THAT THE WARNINGS DIDN'T AFFECT HER SMOKING  
8 BEHAVIOR IN ANY WAY, THAT THE FACT THAT THERE WERE

SHE

HOW

DECISIONS

9 THE FACT THAT THE LANGUAGE CHANGED DIDN'T CHANGE THE WAY  
10 SMOKED OR WHAT SHE SMOKED IN ANY WAY.  
11 YOU'RE GOING TO HEAR AND THERE WILL BE TESTIMONY  
12 FROM MS. HENLEY ABOUT HER LIFE, ABOUT THE THINGS SHE DID,  
13 ABOUT HER DAUGHTERS, THE THINGS SHE TAUGHT THEM. AND  
14 TOLD US AT HER DEPOSITION THAT SHE TAUGHT HER DAUGHTERS  
15 TO MAKE HARD DECISIONS AND TO BE RESPONSIBLE FOR THEIR  
16 DECISIONS. AND SHE TAUGHT HER DAUGHTER TO MAKE  
17 THAT REQUIRE SACRIFICE, DEDICATION AND DISCIPLINE.  
18 SHE TOLD US AT HER DEPOSITION SHE DID TEACH HER  
19 DAUGHTERS ABOUT ALCOHOL, ABOUT SEX, ABOUT SOME OF HARD  
20 KNOCKS THAT LIFE CAN BRING ABOUT. AND WHEN I ASKED HER

THAT

GROWING

SCHOOL

HIGH

HID

21 QUESTION, HER ANSWER WAS "CORRECT," AND SHE SAID "AND  
22 SMOKING." SO SHE TOLD US AT HER DEPOSITION THAT ONE OF THE  
23 THINGS SHE TAUGHT HER CHILDREN ABOUT WHEN THEY WERE  
24 UP WAS CIGARETTE SMOKING.  
25 MS. HENLEY WILL TESTIFY, AS I SAY, AND AS MS.  
26 CHABER TOLD YOU, THAT SHE STARTED TO SMOKE AT A HIGH  
27 DANCE OR A DANCE WITH SOME FRIENDS OF HERS FROM ANOTHER  
28 SCHOOL. AND SHE SMOKED TO BE ONE OF THE GIRLS. AND SHE

JUDITH ANN OSSA, CSR NO. 2310

US

A

GRANDPARENTS,

1 THE FACT THAT SHE WAS SMOKING FROM HER PARENTS AND HER  
2 GRANDPARENTS, JUST AS HER CHILDREN HID THE FACT THAT THEY  
3 WERE CIGARETTES SMOKERS EVENTUALLY FROM HER.  
4 SHE'LL TELL US AND SHE TOLD US AT HER DEPOSITION  
5 THAT STARTING TO SMOKE WAS HER DECISION. WHAT SHE TOLD  
6 AT HER DEPOSITION WAS THAT THERE WAS A POINT IN TIME WHEN  
7 SHE STARTED TO SMOKE AND SHE SAID -- THIS WAS HER ANSWER --  
8 "I THINK YOU WOULD BE STUPID TO SAY THAT I DIDN'T MAKE THE  
9 DECISION TO START SMOKING." WHAT SHE SAID WAS "NOBODY PUT  
10 GUN TO MY HEAD." THOSE ARE HER WORDS. I THINK YOU WILL  
11 HEAR THEM AGAIN WHEN SHE TESTIFIES AT TRIAL.  
12 MS. HENLEY MADE A DECISION TO SMOKE TO BE ONE OF  
13 THE GIRLS, LIKE YOU'VE HEARD MANY PEOPLE DECIDE TO SMOKE.  
14 SHE HID THE DECISION FROM HER PARENTS AND HER  
15 JUST AS HER DAUGHTERS HID THE DECISION FROM HER. AND SHE

16 TOLD US AT HER DEPOSITION THAT IT WAS HER DECISION TO  
17 SMOKE.  
18 SHE ALSO TOLD US THAT SHE CHOSE THE MARLBORO  
19 BRAND CIGARETTES BECAUSE A BOY SHE WANTED TO MEET  
SMOKED  
20 MARLBORO. NOW, SHE'LL TELL YOU AND SHE TOLD US THAT SHE  
SAW  
21 A LOT OF ADS FOR CIGARETTES AND THINGS LIKE THAT WHEN SHE  
22 WAS GROWING UP, BUT THE REASON SHE CHOSE MARLBORO WAS  
23 BECAUSE IT WAS THE BRAND SMOKED BY THE BOY SHE WANTED  
TO  
24 MEET AT SCHOOL.  
25 SHE'LL ALSO TESTIFY THAT SHE HAD HEARD CIGARETTES  
26 REFERRED TO AS COFFIN NAILS AND CANCER STICKS AND THAT  
SHE  
27 HAD HEARD PEOPLE REFER TO PEOPLE SMOKING AS HAVING  
NICOTINE  
28 FITS. AND OF COURSE, THAT SHE WAS SMOKING CIGARETTES WITH

JUDITH ANN OSSA, CSR NO. 2310

47

1 WARNINGS ON THE PACKAGE FOR A GOOD NUMBER OF YEARS.  
2 NOW, ANOTHER THING YOU ARE GOING TO HEAR ABOUT IN  
3 THE LAWSUIT IS ABOUT CANCER. I'M GOING TO TELL YOU A LITTLE  
4 BIT ABOUT THAT. I'M ALSO GOING TO TELL YOU ABOUT PHILIP  
5 MORRIS, OBVIOUSLY. I'M GOING TO TELL YOU ABOUT SOME ISSUES  
6 WITH RESPECT TO CIGARETTES AND WHAT PEOPLE KNOW AND  
DON'T  
7 KNOW AND WHAT CAN BE PROVED AND WHAT CAN'T BE PROVED  
ABOUT  
8 THEM.  
9 BUT ONE OF THE THINGS YOU'RE GOING TO HEAR ABOUT  
10 AND THE REASON YOU'RE GOING TO HEAR IT IS ONE OF THE  
THINGS  
11 MS. CHABER HAS TO PROVE IS MS. HENLEY HAD CANCER THAT  
12 STARTED IN HER LUNGS THAT WAS CAUSED BY CIGARETTE SMOKE.  
13 ONE OF THE THINGS ABOUT CANCER I THINK WE'LL HEAR  
14 FROM ALMOST ALL THE DOCTORS WHO TESTIFY IN THE CASE IS IT'S  
15 HARD TO KNOW WHAT CAUSES CANCER IN GENERAL OR  
SPECIFICALLY,  
16 BECAUSE THERE'S SO MANY THINGS SUSPECTED OF CAUSING  
CANCER,  
17 EVERYTHING FROM THINGS YOU EAT TO THINGS YOU DON'T EAT TO  
18 THINGS YOU ARE EXPOSED TO AT WORK TO THINGS THAT MAY BE  
IN  
19 YOUR HOME, AND/OR SUBSTANCES EVEN IN AIR POLLUTION OR  
20 EXHAUST FROM TRUCKS AND BUSES, THINGS LIKE THAT.  
21 SO ONE OF THE THINGS ABOUT CANCER THAT MAKES IT  
22 HARD TO STUDY IS THAT THERE ARE A LOT OF THINGS THAT ARE  
23 SUSPECTED OF CAUSING CANCER, AND THAT IT'S HARD TO KNOW  
24 WHETHER OR IF PEOPLE HAVE BEEN EXPOSED TO SOME OF THOSE  
25 THINGS AT VARIOUS POINTS IN THEIR LIFE.  
26 ANOTHER THING YOU ARE GOING TO HEAR ABOUT CANCER  
27 IN THIS CASE IS THAT NO DOCTOR WHO IS TRYING TO DIAGNOSE  
OR  
28 TREAT MS. HENLEY'S ILLNESS FOUND A CANCER IN HER LUNG.  
WHEN

JUDITH ANN OSSA, CSR NO. 2310

1 THEY TOOK THE BIOPSY -- I WILL SHOW YOU MEDICAL RECORDS IN A  
 2 MINUTE -- WHEN THEY TOOK THE BIOPSY OF MS. HENLEY'S CANCER,  
 3 THEY TOOK IT FROM A SPOT IN HER CHEST THAT WAS OUTSIDE OF  
 4 HER LUNG. THEY DIDN'T DO THE BIOPSY FROM INSIDE THE LUNG.  
 5 I'LL SHOW YOU MEDICAL RECORDS ABOUT THAT IN A MINUTE. YOU  
 6 WILL SEE WHAT THE DOCTORS SAW AND WHAT THEY DIDN'T SEE

AND

7 WHAT THEY SAID AND WHAT THEY DIDN'T SAY ABOUT WHERE MS.  
 8 HENLEY'S CANCER MAY HAVE BEEN STARTED OR MAY HAVE BEEN  
 9 FOUND.

10 NOW, THE OTHER THING I WANT TO TELL YOU IS THIS:  
 11 THAT MS. HENLEY HAS THE RIGHT TO BRING A LAWSUIT LIKE THIS,  
 12 BUT SHE ALSO HAS THE OBLIGATION TO PROVE CERTAIN THINGS

TO

13 YOU AND --

14 MS. CHABER: OBJECTION, YOUR HONOR.

15 THE COURT: COUNSEL.

16 MR. OHLEMEYER: -- AND ALL THE --

17 THE COURT: COUNSEL.

18 MR. OHLEMEYER: YES, SIR.

19 THE COURT: PLEASE DON'T ARGUE. WHAT HER  
 20 OBLIGATIONS ARE AND WHAT HER RIGHTS ARE IS NOT WHAT THE  
 21 EVIDENCE IS GOING TO SHOW.

22 MR. OHLEMEYER: YES, SIR.

23 THE COURT: IT'S ARGUMENT.

24 MR. OHLEMEYER: YES, SIR. ALL THE EVIDENCE IN  
 25 THIS CASE THAT PHILIP MORRIS PRESENTS IS GOING TO RELATE TO  
 26 THESE FIVE POINTS. AND THAT EVIDENCE CAN COME IN IN A  
 27 NUMBER OF DIFFERENT WAYS. IT CAN COME FROM TESTIMONY

FROM

28 THE WITNESS STAND, INCLUDING CROSS-EXAMINATION.

JUDITH ANN OSSA, CSR NO. 2310

1 NOW, PHILIP MORRIS IS GOING TO BRING WITNESSES TO  
 2 COURT TO TESTIFY IN THIS CASE. BUT AT THE BEGINNING OF THE  
 3 CASE, THE WITNESSES ARE BROUGHT BY MS. CHABER AND MS.  
 4 HENLEY. I GET A CHANCE TO ASK THESE WITNESSES QUESTIONS

AND

5 THE EVIDENCE THAT COMES OUT DURING THE CROSS-EXAMINATION

IS

6 EVIDENCE THAT YOU CAN CONSIDER. EVIDENCE THAT COMES OUT  
 7 WHEN WE BRING WITNESSES IS EVIDENCE YOU CAN CONSIDER.

8 MS. CHABER: OBJECTION, YOUR HONOR.

9 THE COURT: COUNSEL, THIS IS ARGUMENT.

10 MR. OHLEMEYER: I APOLOGIZE, YOUR HONOR

11 THE COURT: ALL RIGHT.

12 MR. OHLEMEYER: ALL THE EVIDENCE YOU HEAR IS  
 13 GOING TO RELATE TO THESE FIVE POINTS. THE FIRST IS PUBLIC  
 14 AND PERSONAL AWARENESS. YOU ARE GOING TO HEAR FROM  
 15 WITNESSES THAT THE RISKS ASSOCIATED WITH SMOKING HAD

BEEN

16 MATTERS OF COMMON KNOWLEDGE AMONG ORDINARY PEOPLE

FOR

17 DECADES IN THIS COUNTRY. YOU ARE ALSO GOING TO HEAR THAT  
 18 MS. HENLEY WAS AWARE OF AND HAD HEARD ABOUT THE RISKS  
 19 ASSOCIATED WITH SMOKING.

20 YOU ARE ALSO GOING TO HEAR ABOUT BASIC SCIENTIFIC  
 21 RESEARCH, AND AS MS. CHABER TOLD YOU, YOU'VE GOT TO START  
 22 BACK INTO THE '50S AND EVEN BEFORE FOR SOME OF THESE

23 ISSUES. AND THE '50S ARE AN IMPORTANT POINT IN TIME IN THIS  
24 CASE, AND YOU GOING TO HEAR A LOT OF EVIDENCE ABOUT THE  
25 '50S, BECAUSE BACK IN THE '50S PEOPLE STARTED TO  
26 SYSTEMATICALLY STUDY CIGARETTE SMOKING AND HEALTH.  
27 THERE HAD BEEN A LOT OF THINGS -- YOU'LL HEAR  
28 THERE WAS A LOT OF THINGS ABOUT SMOKING AND HEALTH FOR A

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50

1 LONG PERIOD OF TIME, BUT IN THE '50S SCIENTISTS AND MEDICAL  
2 RESEARCHERS STARTED USING CERTAIN TECHNIQUES TO STUDY  
THE  
3 ISSUE. AND IN FACT, COMPANIES LIKE PHILIP MORRIS HAD TO  
4 DEVELOP AND INVENT EQUIPMENT TO HELP PEOPLE STUDY THINGS  
5 ABOUT CIGARETTE SMOKING AND CIGARETTE SMOKE. AND YOU'LL  
6 HEAR EVIDENCE ABOUT THAT.  
7 YOU'LL HEAR THINGS PEOPLE HEARD AND SUSPECTED  
8 ABOUT CIGARETTE SMOKING AND YOU WILL HEAR WHAT PEOPLE  
COULD  
9 PROVE OR WHAT THEY COULDN'T PROVE ABOUT SMOKING. AND  
YOU  
10 WILL HEAR WHAT PEOPLE UNCONNECTED TO PHILIP MORRIS  
BELIEVED  
11 THAT EVIDENCE PROVED BACK IN THE '50S. AND YOU WILL HEAR  
12 THAT EVIDENCE THROUGHOUT THE CASE.  
13 YOU'LL ALSO HEAR ABOUT PRODUCT DEVELOPMENT.  
14 YOU'LL HEAR WHAT PHILIP MORRIS AND OTHER COMPANIES DID TO  
15 DEVELOP PRODUCTS TO RESPOND TO SOME OF THE EVIDENCE  
AND TO  
16 RESPOND TO SOME OF THESE QUESTIONS ABOUT CIGARETTES  
AND  
17 CIGARETTE SMOKING.  
18 YOU WILL HEAR THAT CIGARETTE COMPANIES AND  
19 ESPECIALLY PHILIP MORRIS MADE IMPROVEMENTS TO THEIR  
PRODUCTS  
20 AND REDUCED THE TAR AND NICOTINE DELIVERY OF CIGARETTES  
SOLD  
21 TODAY BY ALMOST 70 PERCENT FROM THOSE THAT WERE SOLD IN  
THE  
22 '50S. SO THROUGHOUT THE TIME PERIOD INVOLVED IN THIS  
23 LAWSUIT, THE AMOUNT OF TAR AND NICOTINE BEING DELIVERED IN  
24 CIGARETTE SMOKE HAS BEEN DECREASING TO THE POINT TODAY  
IT'S  
25 70 PERCENT LOWER THAN IT WAS IN THE 1950S.  
26 YOU'RE ALSO GOING TO HEAR, AS I SAID, ABOUT  
27 CANCER AND ITS CAUSES. AND CANCER IS OBVIOUSLY A DIFFICULT  
28 DISEASE TO DIAGNOSE AND TREAT. THERE'S A LOT ABOUT CANCER

JUDITH ANN OSSA, CSR NO. 2310

51

1 THAT DOCTORS WILL TELL YOU IS KNOWN AND THERE'S A LOT  
THAT'S  
2 UNKNOWN. YOU WILL HEAR DOCTORS TELL YOU THAT MOST  
CANCERS  
3 DON'T HAVE A KNOWN CAUSE AND THAT NO CANCER -- NO TYPE OF  
4 CANCER HAS ONLY ONE KNOWN CAUSE.  
5 ONE OF THE THINGS ABOUT CANCER YOU'LL HEAR TOO IS  
6 THAT THE LUNG IS A PLACE WHERE CANCER SPREADS TO THAT  
STARTS

CANCER 7 IN OTHER PARTS OF THE BODY. ONE OF THE PROBLEMS WITH  
8 IS WHEN IT STARTS GROWING, SOMETIMES IT SPREADS TO OTHER  
9 PARTS OF THE BODY. AND IT DOESN'T RELOCATE. IT STARTS HERE  
10 AND SPREADS HERE (INDICATING), AND THEN YOU END UP WITH IT  
11 IN TWO PLACES INSTEAD OF ONE PLACE.  
12 YOU WILL HEAR TESTIMONY FROM THE DOCTORS IN THE  
13 CASE THAT THE LUNG IS THE FIRST AND THE MOST FREQUENT  
PLACE  
14 THAT CANCER SPREADS TO WHEN IT STARTS SOMEWHERE ELSE IN  
THE  
15 BODY. SO JUST BECAUSE SOMEBODY HAS A TUMOR IN THEIR LUNG  
16 DOESN'T MEAN IT STARTED IN THEIR LUNG. IT COULD HAVE  
17 STARTED SOMEWHERE ELSE AND SPREAD TO THE LUNG.  
18 BUT AS I TOLD YOU IN THIS CASE, AND YOU'LL HEAR  
19 THAT SMALL CELL CANCER, THE TYPE OF CANCER THAT MS.  
HENLEY  
20 HAD, IS A TYPE OF CANCER THAT CAN START GROWING IN A  
NUMBER  
21 OF DIFFERENT PARTS OF THE BODY. YOU'LL HEAR DOCTORS TELL  
22 YOU WHICH PARTS OF THE BODY CERTAIN TYPES OF CANCER CAN  
23 BEGIN GROWING IN. AND THEN ONCE IT STARTS GROWING, IT CAN  
24 SPREAD. SO YOU WILL HEAR ABOUT THAT, AND ESPECIALLY IN THE  
25 PLAINTIFF'S CASE. AND YOU'LL HEAR EVIDENCE ABOUT IT IN OUR  
26 CASE.  
27 DOCTORS WILL TELL YOU THAT YOU CAN'T LOOK AT A  
28 CANCER AND FIGURE OUT WHAT CAUSED IT. BUT IN THIS CASE,  
YOU

JUDITH ANN OSSA, CSR NO. 2310

52

1 ARE GOING TO HEAR A LOT OF EVIDENCE. THIS IS A MEDICAL  
2 RECORD FROM THE SURGEON WHO DID THE BIOPSY ON MS.  
HENLEY  
3 (INDICATING). THEY DIDN'T FIND CANCER IN HER LUNG. WHAT HE  
4 DID WAS HE USED AN INSTRUMENT TO GO INTO HER CHEST, AND AS  
5 HE SAID IN THIS REPORT -- WHICH IS WHAT THE DOCTOR WRITES  
6 OUT SO OTHER DOCTORS CAN KNOW WHAT HE OR SHE DID AFTER  
THE  
7 PROCEDURE -- HE PUSHED THE LUNG ASIDE AND TOOK THE BIOPSY  
8 FROM THE CHEST CAVITY.  
9 YOU WILL HEAR A LOT MORE EVIDENCE ABOUT THIS  
10 THROUGHOUT THE CASE. AND I WILL SHOW YOU MORE MEDICAL  
11 RECORDS IN A MINUTE THAT WILL SHOW YOU WHAT THE DOCTORS  
WHO  
12 WERE TREATING MS. HENLEY FOUND AND WHAT THEY SAID ABOUT  
WHAT  
13 THEY FOUND WHEN THEY WERE DOING THESE PROCEDURES.  
14 THE LAST THING YOU ARE GOING TO HEAR ABOUT, THE  
15 LAST BIG ISSUE IS QUITTING SMOKING. IN THIS COUNTRY, 50  
16 MILLION PEOPLE HAVE QUIT SMOKING AND THEY HAVE DONE SO  
FOR  
17 GOOD. YOU WILL HEAR THAT NOT ALL OF THEM DID IT ON THEIR  
18 FIRST TRY. FOR MOST OF THOSE PEOPLE, IT TOOK MORE THAN  
ONE  
19 TRY. BUT 50 MILLION PEOPLE HAVE QUIT. AND THAT'S ALMOST --  
20 IT IS MORE THAN HALF OF ANYONE IN THIS COUNTRY WHO EVER  
21 SMOKED.  
22 THOSE ARE STATISTICS. YOU WILL HEAR THAT THE  
23 CENTER -- THOSE ARE STATISTICS THAT YOU WILL HEAR THE  
CENTER



THE  
PEOPLE  
24 FOR DISEASE CONTROL, WHICH IS PART OF THE GOVERNMENT AND  
25 SURGEON GENERAL OF THE UNITED STATES, HAVE PUT TOGETHER.  
26 THOSE STATISTICS ALSO SHOW THAT 90 PERCENT OF THOSE  
27 WHO QUIT DID SO WITHOUT ANY HELP. THEY DIDN'T USE A PATCH.  
28 THEY DIDN'T USE GUM. THEY DIDN'T GO TO A CLINIC. THEY JUST

JUDITH ANN OSSA, CSR NO. 2310

53

1 QUIT BASICALLY THE SAME WAY MS. HENLEY DID.  
2 AND WHAT YOU WILL HEAR ABOUT MR. HENLEY IS SHE  
3 DECIDED THAT SHE WANTED TO QUIT SMOKING BECAUSE SHE WAS  
4 GOING BECOME A SINGER AND SHE WANTED TO IMPROVE HER  
VOICE.  
HER  
5 SHE WANTED TO IMPROVE HER HEALTH TOO IS WHAT SHE SAID AT  
6 DEPOSITION. SHE SET A GOAL. SO SHE SAID: "I'M GOING TO  
7 QUIT SMOKING ON THIS DAY."  
8 SHE GOT RID OF THE ASHTRAYS. SHE EVEN LOOKED AT  
9 HER LAST CIGARETTE. SHE TOLD US SHE HELD IT. SHE SAID "I'M  
10 NOT GOING TO SMOKE THIS." SHE PUT IT DOWN. SHE DIDN'T  
11 SMOKE IT. THAT'S THE WAY MOST PEOPLE QUIT, SMOKERS,  
12 ALTHOUGH OTHER PEOPLE FIND IT MORE DIFFICULT TO QUIT.  
13 YOU'LL HEAR EVIDENCE ABOUT THAT. FOR SOME PEOPLE,  
QUITTING  
14 IS EASY. FOR SOME PEOPLE, IT'S HARD. BUT THE FACT OF THE  
15 MATTER IS PEOPLE WHO DECIDE TO QUIT DO QUIT, SOME WITH  
HELP,  
16 SOME WITHOUT.  
17 SO LET ME START BACK AGAIN IN THE 1950S AND EVEN  
18 BEFORE. AS MS. CHABER TOLD YOU, SMOKING WAS VERY, VERY  
19 DIFFERENT IN THE 1950S. A LOT MORE PEOPLE SMOKED THAN  
SMOKE  
20 TODAY. AND MOST OF THEM SMOKED UNFILTERED CIGARETTES.  
21 SMOKING WAS SOMETHING THAT WAS MUCH MORE SOCIALLY  
22 ACCEPTABLE. AND I THINK IT'S FAIR TO SAY IT WAS GLAMOURIZED  
23 IN MOVIES AND PERHAPS IN MAGAZINES.  
24 BUT AT THE SAME TIME, THE GOVERNMENT AND  
25 NEWSPAPERS AND MAGAZINES AND OTHER PEOPLE WERE  
CRITICIZING  
26 SMOKING AND TALKING ABOUT THE HEALTH RISKS ASSOCIATED  
WITH  
27 SMOKING IN NEWSPAPERS, MAGAZINES, MEDICAL JOURNALS AND  
OTHER  
28 SOURCES OF INFORMATION THAT PEOPLE WERE EXPOSED TO.

JUDITH ANN OSSA, CSR NO. 2310

54

1 IT GOES ALL THE WAY BACK TO 1604. IT ACTUALLY  
2 GOES BACK TO 1492, WHEN CHRISTOPHER COLUMBUS CAME TO  
WHAT HE  
3 THOUGHT WAS THE NEW WORLD. HE KEPT A DIARY AND IN THOSE  
4 DIARIES YOU CAN FIND REFERENCE TO TOBACCO SMOKING. AND  
YOU  
5 CAN EVEN FIND REFERENCE TO DISCOMFORT THE NATIVES OR THE  
6 PEOPLE LIVING HERE FELT WHEN THEY DIDN'T HAVE THEIR  
TOBACCO  
7 TO SMOKE.

8 SO PHILIP MORRIS DIDN'T INVENT TOBACCO. THEY  
9 DIDN'T INVENT CIGARETTES. PEOPLE HAVE BEEN SMOKING  
TOBACCO  
10 FOR A LONG TIME. KING JAMES WAS THE KING OF ENGLAND IN  
11 1604. HE WROTE A PAMPHLET OR A BOOK THAT YOU WILL HEAR A  
12 LOT ABOUT IN THIS CASE CALLED "COUNTERBLAST OF TOBACCO."  
HE  
13 DESCRIBED THE SMOKING CUSTOM AS "LOATHSOME TO THE EYE,  
14 HATEFUL TO THE NOSE, HARMFUL TO THE BRAIN, DANGEROUS TO  
THE  
15 LUNGS," AND WENT ON ABOUT IT.  
16 THAT STATEMENT WAS WRITTEN IN 1604, BUT IT'S BEEN  
17 REPEATED A LOT SINCE THEN. IN FACT, THE SURGEON GENERAL IN  
18 1964, WHEN THE FIRST SURGEON GENERAL'S REPORT WAS ISSUED,  
19 REPEATED THAT STATEMENT IN THE FORWARD TO THE SURGEON  
20 GENERAL'S REPORT. AND PEOPLE HAVE REPEATED IT AT OTHER  
21 TIMES SINCE THEN.  
22 THERE'S NO DOUBT THAT CIGARETTES HAVE BEEN SMOKED  
23 BY A LARGE NUMBER OF PEOPLE IN THIS COUNTRY OVER THE  
YEARS.  
24 PRESIDENTS HAVE SMOKED THEM, PUBLIC FIGURES HAVE SMOKED  
25 THEM, ATHLETES HAVE SMOKED THEM, SOLDIERS HAVE SMOKED  
THEM  
26 DURING TIME OF WAR. AND TOBACCO IS SUCH A PART OF  
COUNTRY'S  
27 HISTORY THAT THERE ARE TOBACCO LEAVES CARVED ON THE  
PILLARS  
28 OF THE CAPITAL IN WASHINGTON, D.C.

JUDITH ANN OSSA, CSR NO. 2310

55

1 SO EVEN THOUGH SMOKING WAS SOMETHING THAT WAS  
2 SOCIALLY ACCEPTABLE, PEOPLE TALKED ABOUT THE RISKS  
3 ASSOCIATED WITH SMOKING AND READ AND PUBLISHED THINGS  
ABOUT  
4 THEM. HENRY FORD AND THOMAS EDISON WERE PEOPLE WHO  
WOULDN'T  
5 HIRE CIGARETTE SMOKERS AND WOULDN'T LET PEOPLE SMOKE  
WHEN  
6 THEY WORKED FOR THEM. HENRY FORD YOU WILL HEAR WAS VERY  
7 ACTIVE ON THE ISSUE OF SMOKING AND HAD A LOT TO SAY ABOUT  
8 CIGARETTE SMOKING AMONG HIS WORKERS.  
9 BY THE TURN OF THE CENTURY, THOUGH, PEOPLE WERE  
10 CALLING CIGARETTES LITTLE WHITE SLAVERS. YOU WILL HEAR THE  
11 PHRASE COFFIN NAIL AND CANCER STICK WHEN PEOPLE TALK  
ABOUT  
12 CIGARETTES. THOSE PHRASES GO BACK TO THE TURN OF  
CENTURY  
13 PROBABLY TO THE 1800S. LUCY PAGE GASTON WAS A WOMAN  
WHO RAN  
14 A LOT OF -- PEOPLE HEAR ABOUT CARRIE NATION IN THE  
15 TEMPERANCE MOVEMENT AND PROHIBITION OF ALCOHOL. LUCY  
PAGE  
16 GASTON WAS A WOMAN WHO RAN FOR PRESIDENT IN THE 1920S ON  
AN  
17 ANTI-TOBACCO PLATFORM.  
18 THERE WERE STATES IN THE 1910S AND 1920S THAT  
19 TRIED TO BAN THE SALE OF CIGARETTES. AND FROM THE EARLY  
20 1900S, MOST STATES, INCLUDING CALIFORNIA, PASSED LAWS THAT  
21 REQUIRED INSTRUCTION TO BE GIVEN IN SCHOOLS ABOUT HEALTH  
AND

22 INCLUDING REFERENCE TO THE EFFECTS OF TOBACCO AND  
ALCOHOL.  
23 YOU MAY EVEN SEE TEXTBOOKS IN THE CASE THAT WERE  
24 USED IN SCHOOLS AND THESE STATES SOMETIMES MADE RULES  
ABOUT  
25 WHAT BOOKS YOU COULD USE IN STATE SCHOOLS. YOU MAY SEE  
SOME  
26 TEXTBOOKS IN THIS CASE THAT WERE USED IN SCHOOLS DURING  
THE  
27 TIME PERIOD THAT MS. HENLEY WOULD HAVE BEEN GOING TO  
28 SCHOOL.

JUDITH ANN OSSA, CSR NO. 2310

56

1 CALIFORNIA IS LITTLE UNIQUE WITH RESPECT TO  
2 SMOKING. YOU KNOW, IT WASN'T UNTIL 1964 THAT THE SURGEON  
3 GENERAL ISSUED THE REPORT ON SMOKING AND HEALTH. BUT  
4 CALIFORNIA HAD PROGRAMS IN PLACE BEFORE THAT TO MAKE THE  
5 PUBLIC AWARE OF AND TO PROMOTE ISSUES RELATING TO  
SMOKING  
6 AND HEALTH.  
7 BUT THROUGHOUT THIS TIME PERIOD, THERE'S BEEN A  
8 LOT SAID ABOUT CIGARETTES AND CIGARETTE SMOKING. READER'S  
9 DIGEST WAS THE MOST POPULAR AND WIDELY READ MAGAZINE IN  
THE  
10 COUNTRY DURING THE 1930S AND '40S AND EVEN UP INTO THE  
11 '50S.  
12 AND READER'S DIGEST WOULD REPRINT ARTICLES FROM  
13 OTHER MAGAZINES IN A LITTLE SHORTER OR SIMPLER FASHION.  
14 THAT'S JUST WHAT THEY DID. AND THEY HAD A LOT OF ARTICLES  
15 OVER THE YEARS ABOUT SMOKING IN THEM. THEY DIDN'T TAKE  
16 ADVERTISING. THEY DIDN'T TAKE ADVERTISING FROM CIGARETTE  
17 COMPANIES, CERTAINLY. AND THEY SAID A LOT OF THINGS ABOUT  
18 CIGARETTE SMOKING. THEY TALKED IN THE '30S ABOUT PEOPLE  
19 BEING SLAVES TO TOBACCO, AND EVEN MENTIONED CANCER, EVEN  
20 THOUGH YOU'LL HEAR BACK THEN SCIENTISTS REALLY HADN'T  
MADE  
21 AN ASSOCIATION OR CONNECTION BETWEEN CANCER  
SPECIFICALLY AND  
22 CIGARETTE SMOKING.  
23 THEY TALKED IN THE '40S ABOUT DIFFICULT PEOPLE  
24 HAD QUIT. YOU KNOW, THE FACT THAT THERE ARE RISKS  
25 ASSOCIATED WITH SMOKING HAVE BEEN TALKED ABOUT, YOU WILL  
26 HEAR EVIDENCE, FOR ALL THESE YEARS. THE DIFFICULTY PEOPLE  
27 HAVE QUITTING SMOKING IS ALSO SOMETHING THAT PEOPLE HAVE  
28 TALKED ABOUT AND WRITTEN ABOUT OVER ALL THESE YEARS.

JUDITH ANN OSSA, CSR NO. 2310

57

1 NICOTINE IS SOMETHING -- YOU'RE GOING TO HEAR IN  
2 A FEW MINUTES -- IS ONE OF THE MOST WIDELY STUDIED  
3 SUBSTANCES IN THE COUNTRY, IN THE WORLD. IT OF COURSE WAS  
4 MENTIONED IN THESE ARTICLES. TIPS WERE GIVEN ABOUT  
QUITTING  
5 SMOKING.  
6 YOU HEAR A LOT TODAY ABOUT NICOTINE GUM AND  
7 NICOTINE PATCHES, BUT BACK IN THE '40S AND EVEN BEFORE THAT  
8 THERE WERE CLINICS AND THERE WERE OTHER SUBSTANCES  
PEOPLE

9 WERE TRYING TO SELL OR PROMOTE AS WAYS TO HELP PEOPLE  
QUIT  
10 SMOKING.  
11 THE OTHER MAGAZINES, AS YOU SAW, LIKE LIFE  
12 MAGAZINE, RAN CIGARETTE ADVERTISEMENTS CERTAINLY, BUT  
THEY  
13 ALSO RAN ARTICLES ABOUT CIGARETTES AND CIGARETTE  
SMOKING  
14 REPEATING THE PHRASE COFFIN NAILS IN 1953.  
15 IN A FEW MINUTES, I'M GOING TO TELL YOU ABOUT THE  
16 SCIENTIFIC AND THE MEDICAL EVIDENCE. AND WHAT HAPPENED IS  
17 WHEN SOMETHING WOULD HAPPEN IN A LABORATORY OR IN A  
MEDICAL  
18 JOURNAL, OFTENTIMES IT GOT WRITTEN ABOUT IN THE  
NEWSPAPERS  
19 OR THE PUBLIC PRESS. IN A SIMILAR FASHION, LIFE MAGAZINE  
20 WAS A MAGAZINE THAT RAN A NUMBER OF ARTICLES OVER THE  
YEARS  
21 REPORTING ON THE EMERGING EVIDENCE ASSOCIATING  
CIGARETTE  
22 SMOKING WITH A RISK TO HEALTH.  
23 NOW, ANOTHER THING YOU WILL HEAR IS THAT ONE WAY  
24 TO GAUGE HOW COMMON KNOWLEDGE IS OVER ANY PERIOD OF  
TIME IS  
25 TO LOOK AT HUMOR AND SLANG TERMS. I'M NOT TRYING TO BE  
26 FUNNY. THE WITNESSES WHO TELL YOU THIS WILL TELL YOU THAT  
27 THEY ARE NOT TRYING TO BE FUNNY. BUT THE BASIS OF HUMOR  
28 YOU'LL HEAR IS COMMON KNOWLEDGE. IF EVERYBODY  
UNDERSTANDS

JUDITH ANN OSSA, CSR NO. 2310

58

1 WHAT SOMEBODY IS TALKING ABOUT, THEN YOU CAN SHARE  
2 INFORMATION ACROSS A WIDE RANGE OF SOCIETY.  
3 YOU'LL HEAR THAT IN 1947, THE NO. 1 SONG IN THE  
4 COUNTRY WAS SOMETHING CALLED "SMOKE, SMOKE, SMOKE THAT  
5 CIGARETTE," AND IT REFERRED TO CIGARETTES AS NICOTINE  
SLAVES  
6 OR SOMETHING TO THAT EFFECT.  
7 MARK TWAIN WAS AN AUTHOR WHO WROTE A LOT IN THE  
8 1800S AND THERE IS A QUOTE THAT HE SAID BACK THEN THAT GETS  
9 REPEATED A LOT EVEN TODAY. HE SAID: "QUITTING SMOKING IS  
10 EASY. I HAVE DONE IT HUNDREDS OF TIMES." AND THAT'S  
11 SOMETHING THAT PEOPLE TALKED ABOUT AND WROTE ABOUT AS  
AN  
12 EXAMPLE OF THE DIFFICULTY SOME PEOPLE MIGHT HAVE  
QUITTING.  
13 YOU EVEN SAW THINGS LIKE THIS IN 1962  
14 (INDICATING). AND IT'S A CARTOON IN THE NEWSPAPER WHERE  
THE  
15 GIRL HAD THE BUBBLE PIPE AND HER BROTHER SAYS: "NO THANKS.  
16 I'M TRYING TO KICK THE HABIT." YOU WILL HEAR THAT "KICK"  
17 THE HABIT" IS A PHRASE THAT GOT POPULAR BACK IN THE '60S.  
18 THE PUBLIC HEALTH ORGANIZATION SPONSORED A LOT OF  
19 INFORMATION AND ADVERTISEMENTS ENCOURAGING PEOPLE TO  
KICK  
20 THE HABIT. AND SO THAT WAS SO WIDESPREAD THAT YOU'LL SEE  
IT  
21 GETS REPEATED IN SHORTHAND FORM IN THINGS LIKE CARTOONS  
AND  
22 HUMOROUS SITUATIONS.

23 ONE OTHER THING IS READER'S DIGEST AGAIN. THIS  
24 IS 1964 (INDICATING) AND IT'S AN ARTICLE ABOUT QUITTING  
25 SMOKING. AND THERE IS A MAN THAT LOOKS LIKE HE'S AT THE  
26 PSYCHIATRISTS SAYING "I'M WORRIED. I GAVE UP SMOKING  
27 WITHOUT ANY TROUBLE." AGAIN, EVIDENCE OF THE FACT THAT  
SOME  
28 PEOPLE THOUGHT THAT IT WOULD BE DIFFICULT FOR THEM -- FOR

JUDITH ANN OSSA, CSR NO. 2310

59

1 PEOPLE TO QUIT.  
2 LET ME SAY ONE THING ABOUT CARTOONS BEFORE I  
3 LEAVE IT. YOU SAW THAT FLINTSTONES AD. ANOTHER PIECE OF  
4 EVIDENCE, ANOTHER WAY YOU WILL SEE HOW THINGS HAVE  
CHANGED  
5 IS YOU'LL HEAR THAT THE FLINTSTONES, BACK IN THE '50S OR THE  
6 '60S WHEN THAT AD RAN, WAS NOT A CHILDREN'S SHOW. IT WAS  
7 ON AT NIGHT AND IT WAS BILLED AS THE FIRST ADULT CARTOON.  
8 IT HAD AN ADULT MARKET.  
9 NOW, OBVIOUSLY JUST LIKE ANY OTHER SHOW THAT'S ON  
10 TELEVISION, ANYBODY COULD WATCH IT. WHEN WE SEE THE  
11 FLINTSTONES TODAY ON TELEVISION, YOU MAY THINK ABOUT THE  
12 AFTERNOON CARTOONS YOUR CHILDREN WATCH. BUT THE  
FLINTSTONES  
13 AD YOU SAW WAS SOMETHING BACK -- WHEN IT FIRST CAME ON  
14 TELEVISION, IT WAS BILLED AS AN ADULT SHOW AND ADVERTISED  
AS  
15 SUCH. IT WAS ALMOST LIKE A SITUATION COMEDY, ONLY IT WAS A  
16 CARTOON.  
17 SO BY 1964, THE SURGEON GENERAL OF THE UNITED  
18 STATES PUT A GROUP PEOPLE TOGETHER TO WORK ON THE  
SUBJECT  
19 AND ISSUED A REPORT ON SMOKING AND HEALTH. THERE'S BEEN A  
20 REPORT ALMOST EVERY YEAR SINCE THEN FROM THE SURGEON  
21 GENERAL. IT WAS FRONT-PAGE NEWS.  
22 IT CAME OUT ON A SATURDAY AFTERNOON IN JANUARY.  
23 THIS IS SUNDAY, JANUARY 12TH, 1964, AND IT WAS THE TOP OF  
24 THE HEADLINE IN THE CHRONICLE. AND IT WAS EQUALLY  
PROMINENT  
25 IN THE L.A. TIMES.  
26 AND AT ABOUT THAT TIME, PEOPLE STARTED TALKING  
27 ABOUT WHAT TO DO. AND CONGRESS STARTED CONSIDERING  
WHETHER  
28 AND IF TO PUT WARNINGS ON CIGARETTE PACKAGES. AND THERE  
WAS

JUDITH ANN OSSA, CSR NO. 2310

60

1 A FAIR AMOUNT OF DISCUSSION ABOUT THAT.  
2 THE VICE PRESIDENT -- EXECUTIVE VICE PRESIDENT OF  
3 THE AMERICAN MEDICAL ASSOCIATION GAVE TESTIMONY TO THE  
4 FEDERAL TRADE COMMISSION, WHO WAS LOOKING AT THE SUBJECT  
AT  
5 THE TIME AND SAID TO THEM WITH RESPECT TO THE IDEA OF  
6 WHETHER THERE SHOULD BE A WARNING ON CIGARETTE  
PACKAGES.  
7 "THE HEALTH HAZARDS OF CIGARETTE SMOKING HAVE  
8 BEEN PUBLIC KNOWLEDGE FOR MORE THAN 10 YEARS" --  
9 THIS WAS WRITTEN IN 1964 -- "AND ARE COMMON

10 KNOWLEDGE. LABELING WILL NOT ALERT EVEN THE  
11 YOUNG CIGARETTE SMOKER TO ANY RISKS OF WHICH HE  
12 IS NOT ALREADY AWARE."  
13 NOW, YOU'LL HEAR FROM PATRICIA HENLEY AND SHE  
14 WILL TELL YOU WHERE SHE LIVED AND WHAT SHE DID OVER THESE  
15 SAME YEARS. THIS IS THE WORLD THAT SHE'LL TELL YOU SHE  
16 LIVED IN. AND YOU'LL HAVE TO -- SHE'LL TELL YOU WHAT SHE  
17 WAS AWARE OF AND WHAT SHE HAD HEARD, WHAT SHE DIDN'T  
HEAR.  
18 BUT SHE TOLD US AT HER DEPOSITION SHE WAS AWARE OF  
CERTAIN  
19 PHRASES LIKE CANCER STICKS AND COFFIN NAILS. SHE KNEW  
THERE  
20 WERE WARNINGS ON PACKAGES AND THAT SHE KNEW THAT  
SMOKING WAS  
21 SOMETHING THAT WAS SOMETHING THAT ADULTS WERE  
SUPPOSED TO  
22 DO, EVEN THOUGH SHE SAW PEOPLE IN MOVIES AND ON  
TELEVISION  
23 AND IN ADVERTISEMENTS ON SMOKING.  
24 SHE IS GOING TO TELL YOU SHE WAS A DECISION-MAKER  
25 WHO RAN HER BUSINESS. SHE WAS AN INDEPENDENT THINKER.  
26 SHE'S ALSO GOING TO TELL YOU SHE WAS WILLING TO WORK HARD  
27 THROUGHOUT HER LIFE TO ACCOMPLISH THINGS THIS SHE  
THOUGHT  
28 WERE IMPORTANT TO HER. SHE IS GOING TO TELL US -- SHE TOLD

JUDITH ANN OSSA, CSR NO. 2310

61

1 US AND I THINK SHE WILL TELL YOU THAT THE REASON SHE  
SMOKED  
2 MARLBORO WAS BECAUSE IT WAS THE BRAND THE BOY AT SCHOOL  
3 SMOKED, BUT THAT SHE SAW ADVERTISEMENTS FOR OTHER  
BRANDS.  
4 AND SHE WILL TELL US EVEN A CATCHY -- WHAT SHE  
5 SAID WAS A CATCHY ADVERTISEMENT, ONE THAT CAUGHT HER  
6 ATTENTION FOR A BRAND THAT SHE MIGHT TRY AND NOT LIKE  
7 COULDN'T GET HER TO SMOKE THAT BRAND.  
8 SO THE EVIDENCE ABOUT ADVERTISING WILL INCLUDE  
9 EVIDENCE IN THIS CASE FROM PATRICIA HENLEY ABOUT WHAT SHE  
10 DID OR DIDN'T DO IN RESPONSE TO THOSE ADS. AND SHE ALSO  
11 TESTIFIED, AS I THINK I SAID -- I APOLOGIZE IF I'M REPEATING  
12 MYSELF -- THAT WARNINGS ON CIGARETTES PACKAGES DIDN'T  
AFFECT  
13 THE WAY SHE SMOKED OR HER DECISION TO SMOKE.  
14 NOW, THE NEXT POINT I WANT TO TALK ABOUT IS THE  
15 CONDUCT AND THE PRODUCT DEVELOPMENT OF PHILIP MORRIS,  
BASIC  
16 SCIENCE. BEFORE I DO THAT, I WANT TO INTRODUCE SOMEBODY  
TO  
17 YOU BECAUSE IN A CASE LIKE THIS, AS THE JUDGE TOLD YOU, A  
18 CORPORATION IS ENTITLED TO HAVE SOMEBODY HERE TO BE  
PRESENT  
19 DURING THE TRIAL. YOU CAN'T BRING THE COMPANY HERE, BUT  
20 CERTAIN PEOPLE FROM THE COMPANY CAN COME. THERE WILL BE  
21 WITNESSES IN THIS CASE WHO WORK FOR PHILIP MORRIS IN THEIR  
22 RESEARCH AND DEVELOPMENT DEPARTMENTS WHO WILL TESTIFY  
LATER  
23 IN THE CASE. BUT THE UNIT MANAGER, THE SALES MANAGER FROM  
24 THIS PART OF THE STATE IS HERE WITH US AND WILL BE WITH US  
25 FOR MOST OF THE TRIAL. I WANT TO INTRODUCE HER TO YOU SO

26 YOU KNOW NOT TO TALK TO HER IF YOU SEE HER IN THE HALLWAY.  
27 HER NAME IS PATTI ZAPPARELLI. SHE IS RIGHT HERE IN THE  
28 FRONT ROW.

JUDITH ANN OSSA, CSR NO. 2310

62

1 NOW, YOU ARE GOING TO HEAR A LOT OF EVIDENCE  
2 ABOUT WHAT PHILIP MORRIS DID OVER CERTAIN PERIODS OF TIME  
IN  
3 RESPONSE TO SOME OF THIS EVIDENCE ABOUT SMOKING AND  
HEALTH.  
4 AND WHAT THEY DID WAS THAT THEY CONDUCTED RESEARCH IN  
THEIR  
5 OWN LABORATORIES. THEY SPONSORED RESEARCH; THAT IS, THEY  
6 PAID OTHER PEOPLE OUTSIDE THEIR LABORATORIES TO DO  
RESEARCH  
7 AND THEY ALSO DESIGNED PRODUCTS THAT REDUCED TAR AND  
8 NICOTINE, LIKE I SAID, MORE THAN 70 PERCENT.  
9 SOME OF WHAT THEY DID, THEY DID WITH THE  
10 GOVERNMENT. YOU ARE GOING TO HEAR ABOUT A GROUP THAT  
WAS  
11 PUT TOGETHER BY THE GOVERNMENT AND TOBACCO COMPANIES  
CALLED  
12 THE TOBACCO WORKING GROUP, WHERE THEY GOT TOGETHER  
OVER A  
13 LONG PERIOD OF TIME, YEARS, AND TALKED ABOUT WHAT YOU  
COULD  
14 DO TO IMPROVE CIGARETTES AND REDUCE THE RISKS ASSOCIATED  
15 WITH SMOKING.  
16 SO LET'S GO BACK. LET ME SAY ONE OTHER THING  
17 ABOUT THE DOCUMENTS. YOU ARE GOING TO SEE IN EVIDENCE IN  
18 THIS CASE AND HEAR TESTIMONY FROM PEOPLE ABOUT THINGS  
THAT  
19 WERE SAID BY PEOPLE WHO WORK FOR PHILIP MORRIS OR PEOPLE  
AT  
20 PHILIP MORRIS. YOU MAY HEAR PEOPLE TELL YOU THAT THEY  
21 DISAGREE WITH WHAT THOSE PEOPLE SAY. THERE ARE PEOPLE AT  
22 PHILIP MORRIS WHO PROBABLY AGREE WITH SOME OF THE THINGS  
--  
23 MS. CHABER: OBJECTION.  
24 MR. OHLEMEYER: THAT'S GOING TO BE THE  
25 TESTIMONY.  
26 MS. CHABER: IT'S ARGUMENT.  
27 THE COURT: IF YOU ARE TELLING US THAT'S WHAT  
28 THE TESTIMONY WILL BE, THEN YOU CAN PROCEED, IF THAT'S  
YOUR

JUDITH ANN OSSA, CSR NO. 2310

63

1 REPRESENTATION.  
2 MR. OHLEMEYER: IT IS.  
3 THE COURT: LET ME SIMPLY --  
4 MR. OHLEMEYER: IT WILL BE, YOUR HONOR.  
5 THE COURT: LET ME GET OUT MY RULINGS.  
6 MR. OHLEMEYER: I'M SORRY.  
7 THE COURT: IF YOU ARE TELLING US THAT'S WHAT  
8 THE EVIDENCE IS GOING TO SHOW, I'M GOING TO LET YOU  
PROCEED.  
9 MR. OHLEMEYER: WHAT I SAY THE EVIDENCE WILL

SAYS 10 SHOW IS THAT JUST BECAUSE ONE PERSON AT PHILIP MORRIS  
AGREES 11 SOMETHING DOESN'T MEAN EVERYBODY AT PHILIP MORRIS  
WAY. 12 WITH IT OR SHARES THE SAME THOUGHTS OR ACTS THE SAME  
13 SO YOU ARE GOING TO HAVE TO JUDGE THE CONDUCT OF PHILIP  
14 MORRIS ON ALL THE EVIDENCE YOU HEAR IN THE CASE.  
15 MS. CHABER: OBJECTION.  
16 THE COURT: THAT IS ARGUMENT.  
17 MR. OHLEMEYER: LET'S START BACK TO 1950. IF  
18 YOU GO BACK TO 1492 AND 1604, PEOPLE ARE SAYING THINGS  
ABOUT  
19 SMOKING AND HEALTH, BUT IN THE 1950S, THINGS CHANGED.  
20 BECAUSE FOR THE FIRST TIME, SCIENTISTS STARTED USING  
21 TECHNIQUES TO STUDY THE SUBJECT SYSTEMATICALLY AND USING  
22 SCIENTIFIC TOOLS.  
23 ONE OF THE THINGS THEY DID WAS USE SOMETHING  
24 CALLED EPIDEMIOLOGY (WRITING ON BOARD). AND ANOTHER  
THING  
25 YOU HEARD ABOUT THIS MORNING WAS MOUSE SKIN PAINTING.  
26 YOU'LL HEAR ABOUT INHALATION EXPERIMENTS, AND WHAT YOU  
WILL  
27 HEAR IS THIS: EPIDEMIOLOGY IS A WAY TO STUDY GROUPS OF  
28 PEOPLE. AND WHAT YOU DO IS YOU LOOK AT ONE GROUP OF  
PEOPLE

JUDITH ANN OSSA, CSR NO. 2310

64

1 WHO DO ONE THING AND YOU COMPARE IT TO ANOTHER GROUP OF  
2 PEOPLE WHO DON'T DO THAT AND YOU SEE IF SOMETHING  
DIFFERENT  
3 HAPPENS.  
4 A MORE SPECIFIC WAY OF SAYING IT IS YOU TAKE A  
5 GROUP OF PEOPLE WHO SMOKE WHO DEVELOP LUNG CANCER.  
YOU TAKE  
6 A GROUP OF PEOPLE WHO DON'T SMOKE WHO DEVELOP LUNG  
CANCER.  
7 YOU SEE WHETHER THE PEOPLE WHO SMOKE DEVELOP IT MORE  
OFTEN  
8 THAN THE PEOPLE WHO DON'T. THAT'S WHAT AN EPIDEMIOLOGY  
9 STUDY IS.  
10 IN THE 1950S, BEGINNING IN 1950, ONE OF THE FIRST  
11 STUDIES WAS PUBLISHED AND IT WAS WHAT'S CALLED A  
12 RETROSPECTIVE STUDY. IT LOOKS BACKWARDS. AND THE  
DOCTORS  
13 WHO PUBLISH IT LOOK AT PEOPLE WHO SMOKE AND GET LUNG  
CANCER  
14 MORE THAN PEOPLE WHO DON'T.  
15 THERE WERE PEOPLE AND YOU WILL HEAR ABOUT  
16 SCIENTISTS WHO DOUBTED THAT THOSE STATISTICS WERE  
CORRECT.  
17 BECAUSE THEY THOUGHT "IF YOU'RE GOING TO DO A STUDY LIKE  
18 THAT, LOOK FORWARD. DO A PROSPECTIVE STUDY. STUDY  
PEOPLE  
19 IN THE FUTURE, NOT LOOK BACKWARDS." SO THIS STUDY WAS  
20 PUBLISHED AND OTHER PROSPECTIVE STUDIES WERE STARTED.  
SO  
21 PEOPLE STARTED DOING OTHER STUDIES IN THE 1950S.  
22 IN 1953, THIS MOUSE SKIN PAINTING EXPERIMENT WAS  
23 CONDUCTED AND IT WAS PUBLISHED. . WHAT HAPPENED IS THIS. A



24 DOCTOR I THINK IN ST. LOUIS TOOK SOME MICE THAT WERE  
25 SPECIFICALLY BRED TO DEVELOP CANCER, SHAVED THEIR BACKS  
AND  
26 THEY COLLECTED ALL THE THINGS THAT CAME OUT OF CIGARETTE  
27 SMOKE AND PAINTED IT ON THEIR BACKS. AND IT'S A TECHNIQUE  
28 DOCTORS USE, SCIENTISTS USE TO MEASURE THINGS. BUT THEY

JUDITH ANN OSSA, CSR NO. 2310

65  
1 USED, YOU KNOW, THE EQUIVALENT OF 1,000 CIGARETTES A DAY TO  
2 COLLECT THE MATERIAL THAT PRODUCED THE TUMORS AND THE  
MICE  
3 WHO HAD THIS MATERIAL APPLIED TO THEIR BACK DEVELOPED  
4 CERTAIN TUMORS ON THEIR BACK.  
5 THE DOCTOR WHO DID THE EXPERIMENT -- IT WAS  
6 PUBLISHED AND IT RECEIVED A LOT OF PUBLICITY. THE DOCTOR  
7 WHO DID THE EXPERIMENT SAID: "I'M NOT SURE WHETHER THIS  
8 MEANS ANYTHING WITH RESPECT TO PEOPLE." AND YOU'LL HEAR  
9 ABOUT THAT.  
10 SO IN 1954 THEN, AS MS. CHABER TOLD YOU, THE  
11 TIRC, THE TOBACCO INDUSTRY RESEARCH COMMITTEE WAS  
FORMED.  
12 I'M GOING TO TELL YOU A LOT ABOUT THAT IN A MINUTE. BUT  
13 THERE WERE ALSO STUDIES WITH RESPECT TO EPIDEMIOLOGY  
14 PUBLISHED AGAIN IN '54 AND '57. SO BY THE LATE '50S,  
15 SCIENTISTS STARTED LOOKING AT THESE STUDIES AND SAYING:  
16 "THE STATISTICAL STUDIES SUGGEST THAT PEOPLE WHO SMOKE  
17 DEVELOP LUNG CANCER MORE OFTEN THAN PEOPLE WHO DON'T."  
18 THERE WERE PEOPLE NOT EMPLOYED BY PHILIP MORRIS,  
19 NOT CONNECTED TO THE TOBACCO INDUSTRY WHO SAID AT THE  
TIME  
20 "WE'RE NOT SURE STATISTICS SHOULD BE USED TO ESTABLISH OR  
21 PROVE A CAUSE-AND-EFFECT RELATIONSHIP. WE THINK YOU NEED  
TO  
22 DO MORE. YOU SHOULD DO DIFFERENT TYPES OF ANIMAL  
23 EXPERIMENTS." YOU'LL HEAR EVEN THE SURGEON GENERAL  
TODAY  
24 WILL CONCEDE OR ADMIT THAT YOU CAN'T USE STATISTICS TO  
PROVE  
25 CAUSE. SO BACK IN THE '50S, THERE WERE SOME PEOPLE WHO  
HAD  
26 DOUBTS AND EXPRESSED THOSE DOUBTS PUBLICLY ABOUT THE  
27 RELATIONSHIP BETWEEN SMOKING AND HEALTH THAT WEREN'T  
28 CONNECTED TO A TOBACCO COMPANY. IN '54, THE TIRC.

JUDITH ANN OSSA, CSR NO. 2310

66  
1 THEN I WANT TO TALK ABOUT 1962. OH, BY THE WAY,  
2 PEOPLE HAVE DONE INHALATION STUDIES WHERE THEY TRIED TO  
3 EXPOSE ANIMALS TO CIGARETTE SMOKE AND THEY DON'T DEVELOP  
4 LOCAL LUNG TUMORS. WHEN YOU DO THE SAME TYPES OF  
5 EXPERIMENTS WITH THINGS LIKE DIESEL EXHAUST, THEY DO  
DEVELOP  
6 LUNG TUMORS.  
7 SO YOU ARE GOING TO HEAR EVIDENCE IN THE CASE  
8 ABOUT THE EPIDEMIOLOGY, THE MOUSE SKIN PAINTING,  
9 INHALATION. YOU ARE GOING TO HEAR EVIDENCE ABOUT WHAT  
10 PEOPLE THOUGHT IT PROVED AND WHAT IT DIDN'T PROVE. AND  
YOU

THE 11 ARE GOING TO HEAR EVIDENCE ABOUT WHAT PEOPLE OUTSIDE  
12 COMPANIES AND OUTSIDE PHILIP MORRIS SAID ABOUT IT AND WHAT  
13 PEOPLE INSIDE THE TOBACCO COMPANIES AND INSIDE PHILIP  
MORRIS 14 THOUGHT IT PROVED.  
15 IN 1962, AN ORGANIZATION IN ENGLAND PUBLISHED A  
16 REPORT LIKE OUR SURGEON GENERAL'S REPORT THAT  
SUGGESTED THAT 17 CIGARETTE SMOKING WAS A CAUSE OF CANCER. THAT'S THE  
ROYAL 18 COLLEGE REPORT. YOU'LL HEAR ABOUT THAT. '64 WAS THE U.S.  
19 SURGEON GENERAL'S REPORT. (WRITING ON BOARD) I WILL JUST  
20 ABBREVIATE THAT.  
21 ONE OTHER THING ABOUT THE '64 REPORT. IN 1964,  
22 THE SURGEON GENERAL DECIDED OR WROTE A CHAPTER ON  
WHETHER 23 CIGARETTE SMOKING SHOULD BE CALLED A HABIT OR AN  
ADDICTION. 24 NOW, THERE WERE SCIENTISTS, OUTSIDE SCIENTISTS  
THROUGHOUT 25 THE WORLD WHO HAD STUDIED NICOTINE AND CIGARETTES  
BEFORE 26 1964. THEY HAD WRITTEN PAPERS AND CALLED CIGARETTE  
SMOKING 27 AN ADDICTION. BUT IN 1964, THE SURGEON GENERAL SAID:  
28 "BASED ON THE DEFINITION WE'RE GOING TO USE, WE THINK YOU

JUDITH ANN OSSA, CSR NO. 2310

67  
1 SHOULD CALL CIGARETTE SMOKING A HABIT, NOT AN ADDICTION."  
2 THEY WENT ON TO SAY THEY ARE NOT SUGGESTING IT  
3 CAN BE EASY OR NOT DIFFICULT FOR PEOPLE TO QUIT, THAT THEY  
4 THOUGHT IT FIT THE DEFINITION OF HABIT MORE THAN IT FIT THE  
5 DEFINITION OF ADDICTION, EVEN THOUGH OTHER PEOPLE HAD SAID  
6 PUBLICLY AND WRITTEN THAT YOU SHOULD CALL CIGARETTE  
SMOKING 7 AN ADDICTION.  
8 IN 1966, THE FIRST WARNING WENT ON THE PACKAGE, I  
9 AS I TOLD YOU. THEN IN 1988, THE UNITED STATES SURGEON  
10 GENERAL, AS YOU HEARD, LOOKED AT THE ISSUE OF ADDICTION  
11 AGAIN AND USED A DIFFERENT DEFINITION AND DECIDED TO CALL  
12 CIGARETTE SMOKING AN ADDICTION.  
13 SO THAT'S WHAT YOU ARE GOING TO SEE ABOUT THIS  
14 TIME PERIOD AND WHAT HAPPENED OVER TIME. AND YOU ARE  
GOING 15 TO HEAR A LOT ABOUT WHAT PEOPLE OUTSIDE OF PHILIP MORRIS  
HAD 16 TO SAY ABOUT THIS AND WHAT THEY THOUGHT IT MEANT, AND  
WHAT 17 PEOPLE INSIDE PHILIP MORRIS HAD TO SAY ABOUT IT AND WHAT IT  
18 MEANT. AND YOU ARE GOING TO HEAR THERE IS SOME  
DISAGREEMENT 19 ABOUT IT.  
20 SO WHAT YOU ARE ALSO GOING TO HEAR IN THE CASE IS  
21 WHAT PHILIP MORRIS DID. THEY DIDN'T JUST DEBATE THE ISSUE  
22 WITH PEOPLE. THEY DID SOMETHING. AND YOU ARE GOING TO  
HEAR 23 THAT THEY DID RESEARCH IN THEIR OWN LABORATORIES. THEY  
24 PATENTED THINGS THAT OTHER PEOPLE USED EVENTUALLY TO  
STUDY

AND 25 CIGARETTES AND CIGARETTES SMOKING. THEY HAD SEMINARS  
26 WENT TO SEMINARS WHERE PEOPLE INVOLVED IN THE ISSUE WERE  
27 STUDYING AND TALKING ABOUT THE ISSUES. THEY CREATED THE  
28 ORGANIZATION THAT YOU ARE GOING TO HEAR ABOUT IN A MINUTE,

JUDITH ANN OSSA, CSR NO. 2310

68  
1 AND THEY ALSO GAVE MONEY TO OTHER PEOPLE TO STUDY THE  
2 SUBJECT. I WILL TELL YOU ABOUT THAT IN A SECOND.  
3 LET ME SHOW YOU FIRST THIS "FRANK STATEMENT TO  
4 CIGARETTE SMOKERS" THAT MS. CHABER SHOWED YOU EARLIER.  
1953 5 WAS THIS MOUSE SKIN EXPERIMENT. JUST A FEW MONTHS LATER,  
IN 6 JANUARY OF 1954, THESE COMPANIES PUT THIS ORGANIZATION  
7 TOGETHER. AND THIS ADVERTISEMENT, THIS WAS -- THIS RAN IN  
8 ALMOST EVERY BIG NEWSPAPER IN THE COUNTRY.  
9 THEY POINT OUT THAT THERE WERE RECENT REPORTS ON  
THEORY 10 EXPERIMENTS WITH MICE THAT GAVE WIDE PUBLICITY TO A  
11 THAT CIGARETTE SMOKING MAY BE LINKED WITH LUNG CANCER IN  
12 HUMANS. THIS WAS 1954. THEY SAID THAT DOCTORS WHO DID IT  
13 WERE OF PROFESSIONAL STANDING BUT THOSE DOCTORS -- OR  
THAT 14 THESE EXPERIMENTS SHOULDN'T BE REGARDED AS CONCLUSIVE.  
15 AND SO WHAT THEY DID WAS THEY SET UP THIS  
16 ORGANIZATION, AND THEY HIRED A PUBLIC RELATIONS FIRM TO  
HELP 17 THEM SET IT UP. THEY TOLD CONGRESS AND THE GOVERNMENT  
WHAT 18 THEY WERE DOING AND WHY THEY WERE DOING IT.  
19 AND WHAT THIS ORGANIZATION DID WAS THIS. IT  
20 WASN'T RUN BY LAWYERS. IT WAS AN ORGANIZED SCIENTIFIC  
21 ADVISORY BOARD, A GROUP OF SCIENTISTS WHO WERE  
WELL-KNOWN. 22 AND EVERY WITNESS WHO TESTIFIES IN THIS CASE WILL TELL YOU  
23 THAT THEY WERE MEN OF -- I THINK THEY WERE MOSTLY MEN. I'M  
24 NOT SURE THERE WERE WOMEN -- THEY WERE MEN OF  
IMPECCABLE 25 CREDENTIALS.  
26 WHAT THEY WERE GOING TO DO IS THAT THEY WERE  
27 GOING TO TAKE MONEY FROM TOBACCO COMPANIES AND THEN  
GIVE IT 28 TO OTHER PEOPLE TO DO RESEARCH, TO DO INDEPENDENT  
RESEARCH

JUDITH ANN OSSA, CSR NO. 2310

69  
1 ON THE SUBJECTS OF SMOKING AND HEALTH. AND OVER THE  
YEARS, 2 THIS ORGANIZATION HAS GIVEN OUT OVER \$300 MILLION WORTH OF  
3 MONEY, \$300 MILLION TO PEOPLE TO DO THIS KIND OF RESEARCH.  
4 THE RESEARCH HAS BEEN COSPONSORED, WHICH MEANS  
5 THIS ORGANIZATION WILL GIVE A RESEARCHER SOME MONEY AND  
HE 6 OR SHE WILL ALSO GET MONEY FROM ANOTHER ORGANIZATION TO  
DO 7 THE SAME PROJECT. SO SPONSORS OF THE RESEARCH HAVE BEEN

THE  
THE  
HEALTH  
MONEY  
TO  
OTHER  
RESEARCH.  
UP,

8 AMERICAN CANCER SOCIETY, THE AMERICAN HEART ASSOCIATION,  
9 NATIONAL CANCER INSTITUTE, THE WORLD HEALTH ORGANIZATION,  
10 THAT'S WHAT THAT STANDS FOR (INDICATING). ON THE VIDEOTAPE,  
11 YOU HEARD THEM REFER TO THE "WHO." THAT'S THE WORLD  
12 ORGANIZATION.  
13 OVER THE YEARS, MORE THAN 1,500 RESEARCH PROJECTS  
14 AND SEMINARS AND MEETINGS HAVE BEEN SPONSORED. THE  
15 HAS BEEN GIVEN TO MORE THAN 1,000 PEOPLE NOT CONNECTED  
16 TOBACCO INDUSTRY AT 300 DIFFERENT INSTITUTIONS, PLACES LIKE  
17 UCLA, BERKELEY. ANYWHERE THERE ARE GOOD PEOPLE DOING  
18 RESEARCH.  
19 FIVE OF THESE PEOPLE WHO HAVE GOTTEN MONEY FROM  
20 THIS ORGANIZATION HAVE GONE ON TO WIN NOBEL PRIZES IN  
21 AREAS. THESE ARE PEOPLE WHO ARE DOING IMPORTANT  
22 OVER 6,000 PUBLICATIONS HAVE RESULTED FROM THIS RESEARCH.  
23 WHAT THAT MEANS IS SOMEBODY DOES THE RESEARCH, WRITES IT  
24 SENDS IT TO A PROFESSIONAL MAGAZINE OR JOURNAL OR OTHER  
25 SCIENTISTS TO READ. 6,000 OF THIS ORGANIZATION'S RESEARCH  
26 GRANTS HAVE BEEN PUBLISHED.  
27 THE SURGEON GENERAL, WHO WRITES THIS REPORT EVERY  
28 YEAR ON SMOKING -- OR WRITES THE REPORT ON SMOKING AND

JUDITH ANN OSSA, CSR NO. 2310

70

COMPILE  
BY  
DISEASES TO  
CAUSE

1 HEALTH HAS CITED WHAT THEY DO. THEY PUT A BIG LIST BACK  
2 HERE OF ALL THE SOURCES OF INFORMATION THEY USE TO  
3 THIS BOOK (INDICATING). THEY CITED THIS RESEARCH MORE THAN  
4 300 TIMES IN THE SURGEON GENERAL'S REPORTS.  
5 THE ORGANIZATION PUT A BOOK OUT EVERY YEAR  
6 (INDICATING) THAT LISTS ALL THE PEOPLE WHO GOT MONEY AND  
7 WHAT KIND RESEARCH THEY DID. AND SOME OF THIS RESEARCH  
8 DEALS WITH ISSUES THAT -- WELL, STRIKE THAT. YOU'LL HEAR  
9 PEOPLE TESTIFY THAT A LOT OF THE RESEARCH THAT IS FUNDED  
10 THIS ORGANIZATION IS CONSISTENT WITH THE IDEA THAT SMOKING  
11 MAY ACTUALLY CAUSE CANCER.  
12 LET ME SAY THIS, BEFORE I MOVE ON. YOU'LL HEAR  
13 TESTIMONY IN THIS CASE FROM SCIENTISTS AT PHILIP MORRIS.  
14 THEY ARE NOT GOING TO TELL YOU SMOKING DOESN'T CAUSE  
15 CANCER. WHAT THEY WILL TELL YOU IS THAT THERE IS EVIDENCE  
16 TO SUGGEST SMOKING MIGHT CAUSE CANCER -- THAT'S THE  
17 EPIDEMIOLOGY AND THE MOUSE SKIN EXPERIMENTS AND SOME OF  
18 THESE OTHER THINGS -- BUT THAT SCIENCE HASN'T PROVEN OR  
19 CONNECTED SMOKING TO CANCER THE WAY IT HAS OTHER  
20 OTHER SUBSTANCES. AND THAT ALTHOUGH SMOKING MIGHT  
21 CANCER -- AND THERE'S EVIDENCE TO SUGGEST THAT IT MIGHT --  
22 IT'S NOT SCIENTIFICALLY ACCURATE TO SAY THAT IT ACTUALLY  
23 DOES CAUSE CANCER.  
24 AND YOU'LL HEAR OTHER WITNESSES TELL YOU THAT'S  
25 JUST A SEMANTIC OR A WORD GAME. BUT OTHER WITNESSES WILL

26 TELL YOU THAT THAT'S JUST WHAT SCIENCE PROVES. AND THAT  
27 SOME ORGANIZATIONS HAVE TAKEN THAT EVIDENCE AND REACHED  
28 CONCLUSIONS FOR PUBLIC HEALTH PURPOSES OR PUBLIC  
AWARENESS

JUDITH ANN OSSA, CSR NO. 2310

71  
1 ISSUES, WHEREAS OTHER ORGANIZATIONS OR OTHER INDIVIDUALS  
2 HAVE BEEN MORE CRITICAL OR SKEPTICAL OF IT. NO ONE FROM  
3 PHILIP MORRIS IS GOING TO TELL YOU THAT SMOKING DOESN'T  
4 CAUSE CANCER.  
5 YOU'LL ALSO HEAR THAT PHILIP MORRIS AND OTHER  
6 TOBACCO COMPANIES GAVE THE AMERICAN MEDICAL ASSOCIATION  
OVER  
7 \$15 MILLION TO STUDY THE ISSUE OF TOBACCO AND HEALTH. AND  
8 THIS OCCURRED AFTER THE SURGEON GENERAL'S REPORT UP  
UNTIL  
9 THE 1970S. THE PUBLIC HEALTH SERVICE PART OF THE  
GOVERNMENT  
10 ALSO PUTS SOME MONEY INTO THIS FUND TO DO RESEARCH.  
THERE  
11 WERE 219 RESEARCH PROJECTS COMPLETED. MORE THAN 800  
PEOPLE  
12 DID THE RESEARCH. THE PEOPLE WHO DID THE RESEARCH HAD TO  
13 PUBLISH THEIR FINDINGS. THEY HAD TO MAKE THEM PUBLIC.  
14 THERE WERE 795 PUBLICATIONS ON SMOKING AND HEALTH  
15 AND THEY PUT THEM ALL IN THIS BOOK CALLED TOBACCO AND  
HEALTH  
16 AND PUBLISHED IT IN 1978 (INDICATING), THE RESULTS OF ALL  
17 THE RESEARCH SPONSORED BY PHILIP MORRIS AND OTHER  
TOBACCO  
18 COMPANIES.  
19 NOW, THE OTHER THING THAT PHILIP MORRIS DID WAS  
20 TO DESIGN PRODUCTS THAT REDUCED THE THINGS PEOPLE WERE  
21 SAYING MIGHT CREATE THE RISK OF SMOKING. AND LET ME DRAW  
A  
22 PICTURE FOR YOU. (WRITING ON BOARD)  
23 YOU ARE GOING TO HEAR TESTIMONY IN THE CASE ABOUT  
24 CIGARETTES, OBVIOUSLY, AND SOMEBODY IS GOING TO EXPLAIN  
TO  
25 YOU HOW CIGARETTES WORK. AND LET ME SAY THIS: IF YOU  
26 ASSUME THAT THIS IS A MODERN CIGARETTE, THIS WOULD BE  
WHERE  
27 THE TOBACCO GOES, THIS IS WHERE THE FILTER IS, AND THE  
28 TOBACCO CAN BE THREE OR FOUR DIFFERENT TYPES OF  
TOBACCO. IT

JUDITH ANN OSSA, CSR NO. 2310

72  
1 GROWS IN DIFFERENT PARTS OF THE WORLD. THEY BLEND IT.  
SOME  
2 CIGARETTES TASTE DIFFERENT THAN OTHER CIGARETTES BECAUSE  
OF  
3 THE WAY THEY BLEND THE TOBACCO.  
4 THERE ARE ALSO THINGS YOU ARE GOING TO HEAR ABOUT  
5 CALLED RECONSTITUTED TOBACCO AND EXPANDED TOBACCO.  
(WRITING  
6 ON BOARD) NOW, RECONSTITUTED TOBACCO IS A WAY TO TAKE  
THE

ALMOST 7 SCRAPS WHEN THEY MAKE CIGARETTES AND COMBINE THEM,  
8 LIKE MAKING PAPER INTO SOMETHING THEY CAN USE IN  
9 CIGARETTES.  
10 EXPANDED TOBACCO IS A LOT LIKE TAKING TOBACCO AND  
11 PUFFING IT UP ALMOST LIKE A RICE-CRISPY, THAT LETS THE  
12 TOBACCO END UP IN THE CIGARETTE. AND TO BE SURE, THERE  
ARE  
13 REASONS TO DO THIS FOR EFFICIENCY, BUT THERE ARE ALSO  
14 REASONS TO DO THIS BECAUSE THEY RESULT IN LOWER TAR AND  
15 NICOTINE IN THE CIGARETTE SMOKE.  
16 YOU ARE GOING TO HEAR TESTIMONY ABOUT THIS  
17 TOBACCO WORKING GROUP AND THE RECOMMENDATIONS THEY  
MADE FOR  
18 HOW TO REDUCE TAR AND NICOTINE IN CIGARETTE SMOKE. THAT  
WAS  
19 THE ORGANIZATION WHERE THE COMPANIES AND THE  
GOVERNMENT  
20 STUDIED THE ISSUE. AND TWO OF THE THINGS THEY SAID IS "YOU  
21 SHOULD USE RECONSTITUTED TOBACCO AND USE EXPANDED  
TOBACCO."  
22 PHILIP MORRIS WAS ALREADY DOING THAT BEFORE THE  
GOVERNMENT  
23 COMMITTEE SUGGESTED IT.  
24 ANOTHER THING YOU CAN DO IS PUT A FILTER ON THE  
25 CIGARETTE OBVIOUSLY TO REDUCE TAR AND NICOTINE. WHAT  
PEOPLE  
26 TALK ABOUT WHEN THEY TALK ABOUT TAR AND NICOTINE IS WHAT  
27 COMES OUT OF THE END OF THE CIGARETTE WHEN YOU SMOKE IT.  
28 THE TAR IS THE MATERIAL IN THE SMOKE.

JUDITH ANN OSSA, CSR NO. 2310

73

1 AND I WANT TO MAKE SURE YOU UNDERSTAND THIS.  
2 THERE ARE THINGS ADDED TO TOBACCO, AS WE SAID, TO FAVOR IT  
3 AND TO HELP PROCESS IT AND TO KEEP IT MOIST. THOSE ARE THE  
4 INGREDIENTS I TALKED ABOUT EARLIER. THE 4,000 CHEMICALS  
5 THAT YOU HEARD ABOUT ARE AT THIS END (INDICATING). IT'S  
6 WHAT COMES OUT OF THE CIGARETTE.  
7 AND THE REASON THERE ARE 4,000 CHEMICALS IN  
8 CIGARETTE SMOKE IS BECAUSE TOBACCO GROWS IN THE GROUND.  
IF  
9 YOU BURN WOOD IN THE FIREPLACE OR IF YOU COOK A STEAK OR IF  
10 YOU DRIVE A CAR, THE BURNING OF THAT MATERIAL CREATES  
ALMOST  
11 THE SAME NUMBER AND SAME TYPE OF CHEMICALS. BUT THE  
FLAVORS  
12 GO INTO THIS END (INDICATING).  
13 ANOTHER THING THAT THE TOBACCO WORKING GROUP SAID  
14 YOU SHOULD DO IS TO PUT HOLES IN THE FILTER TO DILUTE THE  
15 SMOKE, SO THAT WHEN YOU DRAW ON THE CIGARETTE, AIR GOES  
INTO  
16 IT THAT REDUCES TAR AND NICOTINE. PHILIP MORRIS WAS DOING  
17 THAT BEFORE THE GOVERNMENT COMMITTEE RECOMMENDED IT.  
18 ALSO, YOU'LL HEAR TALKED ABOUT USING WHAT THEY  
19 CALL POROUS PAPER, PAPER THAT HAS HOLES IN IT TO ALLOW  
20 THINGS TO COME IN AND COME OUT.  
21 SO YOU ARE GOING TO HEAR EVIDENCE IN THE CASE  
22 ABOUT THE TECHNIQUES THAT WERE USED TO REDUCE THE TAR  
AND  
23 NICOTINE DELIVERY. BECAUSE WHAT YOU ARE GOING TO HEAR IN

BURN 24 THIS CASE IS IT'S ALMOST IMPOSSIBLE TO SELECTIVELY REMOVE  
25 ONE OR MORE OF THESE CHEMICALS (INDICATING). ONCE YOU  
26 SOMETHING, IT'S HARD TO CHANGE WHAT COMES OUT, WHAT  
27 RESULTS.  
28 SO WHAT THE GOVERNMENT AND OTHER PEOPLE SAID TO

JUDITH ANN OSSA, CSR NO. 2310

74

REDUCE 1 DO WAS JUST GENERALLY REDUCE EVERYTHING. IF YOU CAN  
WILL BE 2 EVERYTHING THAT COMES OUT A CERTAIN PERCENTAGE, THAT  
3 A STEP IN THE RIGHT DIRECTION.  
4 AND THAT'S WHAT THE COMPANIES HAVE DONE AND THEY  
5 KEEP TRACK OF THAT. THE SURGEON GENERAL HAS DONE THAT.  
AND 6 HE HAS PUBLISHED A CHART THAT SHOWS HOW THE AVERAGE  
AMOUNT 7 OF TAR AND NICOTINE IN CIGARETTE SMOKE HAS DECREASED OVER  
8 THE YEARS. AND I HAVE ADDED THIS (INDICATING), BECAUSE IT  
9 SHOWS YOU WHEN THE COMPANIES STARTED USING  
RECONSTITUTED 10 TOBACCO. IT SHOWS YOU WHEN PHILIP MORRIS STARTED USING  
11 POROUS PAPER. IT SHOWS YOU WHEN THEY EXPANDED TOBACCO,  
AND 12 WHEN THEY USED THESE VENTILATION HOLES, ALL OF WHICH  
13 RESULTED IN A REDUCTION OF TAR AND NICOTINE.  
14 YOU WILL HEAR EVIDENCE IN THE CASE THAT THE SAME  
15 RESEARCHERS WHO WERE DOING THOSE STUDIES BACK IN THE  
'50S 16 HAVE LOOKED AT THIS ISSUE AND SAID PUBLICLY THAT PHILIP  
17 MORRIS AND OTHER TOBACCO COMPANIES WERE MOVING IN THE  
RIGHT 18 DIRECTION TO REDUCE THE TAR AND NICOTINE, WHICH THEY  
THOUGHT 19 WOULD REDUCE THE RISKS ASSOCIATED WITH SMOKING.  
20 IF YOU WANT TO TAKE A SHORT BREAK, JUST LET ME  
21 KNOW.  
22 THE COURT: HOW LONG HAVE YOU BEEN GOING? WHEN  
23 DID YOU START?  
24 MS. CHABER: AN HOUR.  
25 MR. OHLEMEYER: ABOUT AN HOUR.  
26 THE COURT: ABOUT AN HOUR. ARE THERE ANY JURORS  
27 THAT WOULD LIKE TO HAVE A BRIEF RECESS?  
28 (HANDS RAISED)

JUDITH ANN OSSA, CSR NO. 2310

75

1 MR. OHLEMEYER: YES.  
2 THE COURT: YES. LET'S JUST TAKE A 15-MINUTE  
3 RECESS UNTIL 3:30, JURORS. WE'LL RECONVENE THEN. PLEASE  
4 CONTINUE TO FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT  
5 3:30.  
6 (RECESS TAKEN AT 3:15 P.M.)  
7 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
8 CHAMBERS, OUTSIDE THE PRESENCE OF THE JURY,  
9 AT 3:35 P.M.)  
10 THE COURT: WE'RE ON THE RECORD FOR PURPOSES OF

11 RECORDING ANOTHER NOTE. THIS IS FROM JUROR NO. 2, MR.  
12 BECKWITH, AND I HAVE SHARED IT WITH COUNSEL. IT SAYS:  
13 "IN FAIRNESS TO THE JURY, PLEASE - DO NOT ALLOW  
14 THE COMINGS AND GOINGS IN THE GALLERY - DO NOT  
15 ALLOW THE LAWYERS TO CONVERSE IN THE HALLWAYS  
16 WITH FRIENDS OR COHORTS, OUR ONLY PLACE TO SIT -  
17 SHOULD NOT THE JURY BE ALLOWED TO REQUEST  
18 THAT THE LAWYERS BE REQUIRED TO FILL OUT THE SAME  
19 QUESTIONNAIRES FOR OUR REVIEW?"  
20 AFTER A DISCUSSION WITH COUNSEL OFF THE RECORD, I  
21 TAKE IT THAT YOU STIPULATE THAT THE COURT SHOULD DO  
NOTHING  
22 ABOUT THIS PARTICULAR NOTE. IS THAT SO STIPULATED?  
23 MR. OHLEMEYER: SO STIPULATED.  
24 MS. CHABER: YES.  
25 THE COURT: ALL RIGHT. OFF THE RECORD.  
26 (THE FOLLOWING PROCEEDINGS WERE HELD IN  
27 THE COURTROOM, IN THE PRESENCE OF THE JURY,  
28 AT 3:42 P.M.)

JUDITH ANN OSSA, CSR NO. 2310

76

1 THE COURT: WE'RE BACK ON THE RECORD.  
2 MR. OHLEMEYER, YOU MAY CONTINUE.  
3 MR. OHLEMEYER: THANK YOU, JUDGE.  
4 I'M GOING TO MOVE ON AND BRIEFLY TALK ABOUT TWO  
5 OR THREE OTHER THINGS. BUT BEFORE I DO, LET ME SAY ONE  
6 OTHER THING ABOUT THIS ORGANIZATION THAT'S SPONSORED THE  
7 RESEARCH.  
8 YOU HEARD ABOUT A MAN NAMED BILL DUNN, WHO WORKED  
9 AT PHILIP MORRIS WHO HAD THOUGHTS ABOUT NICOTINE THIS  
10 MORNING. THAT SPEECH HE GAVE WAS GIVEN AT A CONFERENCE  
11 SPONSORED BY THIS ORGANIZATION (INDICATING), AND IT WAS IT  
12 WAS HELD IN 1973. AND WHAT THEY DID WAS THEY WENT TO A  
NICE  
13 PLACE AND INVITED PEOPLE FROM ALL OVER THE WORLD WHO  
STUDIED  
14 NICOTINE TO COME TO THAT CONFERENCE AND TALK ABOUT IT.  
15 IT WASN'T JUST PEOPLE EMPLOYED BY TOBACCO  
16 COMPANIES. IT WAS RESEARCHERS THAT YOU'LL HEAR WHO WERE  
17 INVOLVED IN THE ISSUE AT THAT TIME. THEY ALL GAVE SPEECHES  
18 AND THEY SAID CERTAIN THINGS AND DID SOME RESEARCH, PUT IT  
19 ALL IN A BOOK AND PUBLISHED IT AND IT WAS CALLED SMOKING  
20 BEHAVIOR, MOTIVES AND INCENTIVES. AND THIS WAS A  
CONFERENCE  
21 THAT WAS FUNDED AND SPONSORED BY THIS ORGANIZATION. SO  
THAT  
22 WAS ONE OF THE THINGS THAT THIS ORGANIZATION DID. YOU'LL  
23 HEAR TESTIMONY FROM PEOPLE FROM PHILIP MORRIS THAT NOT  
24 EVERYBODY AGREED WITH THE THINGS BILL DUNN THOUGHT  
ABOUT  
25 CIGARETTE SMOKING.  
26 NOW I WANT TO TALK ABOUT CANCER, BECAUSE,  
27 UNFORTUNATELY, THERE'S A LOT ABOUT CANCER THAT ISN'T YET  
28 KNOWN AND THERE ARE SOME THINGS THAT ARE KNOWN. YOU'LL  
HEAR

JUDITH ANN OSSA, CSR NO. 2310

77



HAS ONLY 1 THAT MOST CANCER HAS NO KNOWN CAUSE AND THAT CANCER  
2 ONE KNOWN CAUSE.  
3 YOU'LL HEAR DOCTORS TELL YOU, THE DOCTORS WHO ARE  
4 INVOLVED IN DIAGNOSING CANCER, THAT SOMEBODY HAS A BIOPSY  
5 AND THEY SEND THE TISSUE DOWN TO THE LABORATORY. A  
DOCTOR  
6 HAS TO DECIDE IS THIS CANCER OR NOT CANCER. THEY'LL TELL  
7 YOU THAT THEY CAN'T TELL YOU WHAT CAUSED CANCER BY  
LOOKING  
8 AT IT.  
9 THEY CAN LOOK AT A PIECE OF TISSUE AND SAY "THIS  
10 IS CANCER" OR "THIS IS NORMAL," BUT THEY CAN'T TELL YOU WHAT  
11 CAUSED IT.  
12 YOU'LL ALSO HEAR FROM I THINK EVERY DOCTOR WHO  
13 TESTIFIES IN THIS CASE THAT A DOCTOR DOESN'T NEED TO  
14 DETERMINE WHAT CAUSED YOUR CANCER OR SOMEBODY'S  
CANCER IN  
15 ORDER TO TREAT IT. DIAGNOSING THE CANCER AND TREATING  
THE  
16 CANCER IS A DIFFERENT ISSUE THAN TRYING TO FIGURE OUT WHAT  
17 CAUSED IT.  
18 I MENTIONED BRIEFLY CANCER CAN START IN ONE PART  
19 OF THE BODY AND SPREAD TO OTHER PARTS. THE WORD FOR  
THAT IS  
20 METASTASIS. YOU MAY HEAR THAT AT DIFFERENT POINTS IN THE  
21 TRIAL. THE LUNG IS THE FIRST AND MOST FREQUENT PLACE  
WHERE  
22 CANCER THAT STARTS IN OTHER PARTS OF THE BODY SPREADS  
TO.  
23 THE BLOOD SUPPLY GOES THROUGH THE LUNGS AND CANCER CAN  
24 SPREAD THROUGH BLOOD.  
25 YOU'LL HEAR TOO ABOUT WHAT I HAVE WRITTEN HERE AS  
26 DIAGNOSTIC DISCORDANCE. (WRITING ON BOARD) WHAT THAT  
27 REALLY MEANS IS DOCTORS HAVE DONE STUDIES AND THEY HAVE  
28 TRIED TO COMPARE CASES IN WHICH PEOPLE WERE DIAGNOSED  
WITH

JUDITH ANN OSSA, CSR NO. 2310

78

WERE 1 CANCER AND THEN THEY UNFORTUNATELY DIED AND AUTOPSIES  
DIAGNOSIS 2 DONE AND THEY TRIED TO COMPARE HOW ACCURATE THE  
3 WAS ONCE THEY HAD MORE INFORMATION.  
4 AND WHAT THEY FOUND WAS IN A LOT OF CASES, ALMOST  
5 HALF, THERE IS CANCER FOUND IN SOMEBODY'S BODY ON AUTOPSY  
6 THAT WAS UNDETECTED OR UNKNOWN DURING THEIR LIVES. AND  
THAT  
7 INFORMATION -- FORTUNATELY, THAT INFORMATION DOESN'T  
USUALLY  
8 AFFECT HOW YOU TREAT CANCER. BECAUSE NO MATTER WHERE A  
9 CANCER STARTS, A LOT OF TIMES THE DOCTOR WILL TREAT IT THE  
10 SAME WAY, WITH CHEMICALS AND RADIATION.  
11 BUT WHAT IT AFFECTS IS VITAL STATISTICS AND SOME  
12 OF THESE EPIDEMIOLOGY STUDIES IN TERMS OF HOW ACCURATE  
SOME  
13 OF THOSE NUMBERS ARE.  
14 YOU'RE GOING TO HEAR A LOT ABOUT CANCER FROM A  
15 LOT OF DOCTORS. YOU'RE GOING TO HEAR FROM SOME DOCTORS  
WHO

HAS  
THE  
THEIR  
HOW  
STUDIED  
WHO  
THAT

16 HAVE ACTUALLY STUDIED THE ISSUE WITH SOME OF THE -- LET ME  
17 BACK UP. YOU HEARD ABOUT A DR. HAMMAR THIS MORNING. HE  
18 ACTUALLY STUDIED ISSUES RELATING TO CANCER WITH SOME OF  
19 DOCTORS THAT PHILIP MORRIS IS GOING TO BRING TO TESTIFY.  
20 THEY'VE WORKED TOGETHER AND PUBLISHED THE RESULTS OF  
21 RESEARCH FOR OTHER DOCTORS TO READ. SO YOU WILL HEAR  
22 DOCTORS AROUND THE COUNTRY AND AROUND THE WORLD  
23 CANCER.  
24 ANOTHER THING YOU'LL HEAR ABOUT SMOKING AND  
25 CANCER IS THE SAME STATISTICS THAT INDICATE THAT PEOPLE  
26 SMOKE DEVELOP LUNG CANCER MORE THAN PEOPLE WHO DON'T  
27 INDICATE THAT IF YOU QUIT SMOKING, AFTER A PERIOD OF TIME  
28 YOUR RISK OF DEVELOPING LUNG CANCER DECLINES ALMOST TO

JUDITH ANN OSSA, CSR NO. 2310

THEY  
THE  
THOUGHT IT  
HAVE  
RULE  
WAS  
EXPOSED  
LIFE.  
LUNG  
ARE  
CANCER

79

1 OF SOMEBODY WHO DOESN'T SMOKE. AND YOU WILL HEAR THAT  
2 DOCTORS ADVISE THEIR PATIENTS TO QUIT SMOKING BECAUSE  
3 CAN, AND BECAUSE THE DOCTORS BELIEVE IT IMPROVES THEIR  
4 HEALTH.  
5 NOW, IN THIS CASE YOU ARE GOING TO HEAR A LOT  
6 ABOUT MS. HENLEY AND HER MEDICAL SITUATION. SHE WENT TO  
7 DOCTOR IN LATE '97, AS YOU'VE HEARD, AND SHE HAD A COUGH.  
8 SHE HAD SOME OTHER SYMPTOMS THAT AREN'T SPECIFIC TO LUNG  
9 CANCER OR ANY OTHER TYPE OF CANCER.  
10 THE DOCTORS DID SOME EVALUATIONS AND SHE HAD A  
11 CHEST X-RAY AND IT WAS ABNORMAL. AND THESE ARE MEDICAL  
12 RECORDS YOU WILL HEAR ABOUT AND SEE. THE DOCTORS  
13 WAS SUGGESTIVE OF A MALIGNANCY. THAT MEANS WHERE THEY  
14 A SUSPICION SHE MIGHT HAVE A CANCER. BUT YOU COULDN'T  
15 OUT TUBERCULOSIS, PNEUMONIA.  
16 WHAT THE DOCTORS DO WHEN SOMEBODY COMES IN WITH  
17 SOME SYMPTOMS, THEY TRY TO THINK OF ALL THE POSSIBILITIES  
18 THAT THEY OUGHT TO CHECK OUT TO MAKE SURE THEY'RE NOT  
19 OVERLOOKING SOMETHING. AND WHAT THEY HAD MS. HENLEY DO  
20 ANSWER SOME QUESTIONS ABOUT HERSELF AND GIVE THEM SOME  
21 INFORMATION. SHE TOLD THEM THAT SHE MIGHT HAVE BEEN  
22 TO TUBERCULOSIS FROM AN UNCLE AT ANOTHER POINT IN HER  
23 AND YOU'LL HEAR THAT WHEN YOU'RE TALKING ABOUT  
24 CANCERS THAT START IN THE LUNG, THERE ARE A LOT OF THINGS  
25 BESIDES CIGARETTE SMOKING THAT ARE SUSPECTED OF CAUSING  
26 CANCER. YOU KNOW, THE THREE FACTS ABOUT CANCER THAT YOU  
27 GOING TO HEAR IS THAT CERTAINLY SMOKERS DEVELOP LUNG

JUDITH ANN OSSA, CSR NO. 2310

80

EVEN  
AN

UP

YOU

SPUTUM

MICROSCOPE

CHEST.

1 YOU ARE ALSO GOING TO HEAR LUNG CANCER OCCURS IN  
2 NONSMOKERS. IT OCCURS IN PEOPLE THAT AREN'T AROUND  
3 CIGARETTE SMOKERS. THERE ARE OTHER THINGS SUSPECTED OF  
4 CAUSING LUNG CANCER BESIDES CIGARETTE SMOKING.

5 THE THIRD THING THAT YOU WILL HEAR IS 90 PERCENT  
6 OF THE PEOPLE WHO SMOKE DON'T DEVELOP LUNG CANCER. SO

7 THOUGH MS. HENLEY WAS A SMOKER AND EVEN THOUGH SHE HAD

8 X-RAY THAT MADE PEOPLE SUSPICIOUS, THERE ARE OTHER THINGS  
9 THAT DOCTORS HAD TO THINK ABOUT BESIDES LUNG CANCER.

10 SO THEY GAVE HER SOME TESTS. AND ONE OF THE  
11 THINGS THEY DID WAS TO ANALYZE HER SPUTUM. IT'S A VERY  
12 SIMPLE TEST YOU'LL HEAR ABOUT WHERE THEY HAVE YOU COUGH

13 SOME SPIT, AND THEY LOOK AT IT UNDER THE MICROSCOPE FOR  
14 ABNORMAL CELLS.

15 SOME OF THE DOCTORS WHO TESTIFY WILL TELL THAT  
16 WHEN SOMEBODY HAS A CANCER THAT STARTS IN THEIR LUNG --

17 ARE GOING TO HEAR THE PHRASE "PRIMARY LUNG CANCER" IN THIS  
18 CASE. "PRIMARY" MEANS IT STARTS IN THE LUNG. AND THAT WHEN  
19 PEOPLE HAVE PRIMARY LUNG CANCER, VERY OFTEN THEIR

20 CYTOLOGY IS POSITIVE. A DOCTOR CAN LOOK UNDER A

21 AT THIS SPIT AND SEE CANCER CELLS. IN MS. HENLEY'S CASE, IT  
22 WAS NEGATIVE.

23 AND ALL THE DOCTORS WILL TELL YOU THAT NOBODY  
24 STOPS HERE. THEY DO SOME MORE TESTS. SO WHAT THEY DID IN  
25 MS. HENLEY'S CASE IS TAKE SOME X-RAYS. AND THERE ARE TWO  
26 DIFFERENT THINGS THEY DID. THEY TOOK AN X-RAY, WHICH IS  
27 THEY JUST TAKE A PICTURE OF YOUR CHEST. THEY DID A CT SCAN,  
28 WHICH IS A THREE-DIMENSIONAL COMPUTER IMAGE OF YOUR

JUDITH ANN OSSA, CSR NO. 2310

81

OTHER

CLEAR,

NOTHING

1 IN THE CHEST X-RAY, YOU'LL HEAR THAT THEY FOUND  
2 NO FOCAL INFILTRATES, WHICH IS TO SAY THEY SAW NOTHING IN  
3 THE LUNG, BUT THEY SAW SOMETHING IN THE MEDIASTINUM. AND  
4 WHAT YOU ARE GOING TO HEAR IN THE CASE IS THAT THE  
5 MEDIASTINUM IS THE PART OF YOUR CHEST BETWEEN THE LUNGS.  
6 AND IT'S NOT EMPTY. THERE SOME OTHER LYMPH NODES AND

7 ORGANS, BUT IT'S NOT INSIDE THE LUNG. IT'S OUTSIDE THE  
8 LUNGS. IT'S BETWEEN THE LUNGS.

9 THEY DID A CT SCAN, WHICH IS THIS 3-D  
10 COMPUTER-GENERATED THING. AND THE LUNGS APPEARED

11 EXCEPT FOR A FAINT INFILTRATE IN THE LEFT LOWER LOBE. THE  
12 DOCTORS WILL TELL YOU THAT'S NOT WHERE -- THAT WAS

13 THAT THEY THOUGHT WAS A CANCER.

14 BUT WHAT THEY DECIDED WAS MS. HENLEY HAD A MASS,

15 A TUMOR, THEY THOUGHT, OR SOMETHING IN HER MEDIASTINUM,  
16 OUTSIDE THE LUNG BUT ON THE TOP OF THE LUNG. AND THEY  
17 CALLED IT A MEDIASTINAL AND LEFT HILAR MASS. YOU ARE GOING  
18 TO HEAR DOCTORS -- YOU WILL SEE PICTURES. THEY WILL DRAW  
19 THINGS. THEY WILL EXPLAIN ALL THIS TO YOU.  
20 SO WHAT HAPPENED THEN WAS -- AND YOU'LL ALSO HEAR  
21 THAT IN MOST PEOPLE WHO HAVE LUNG CANCER THAT STARTS IN  
22 THEIR LUNG, YOU CAN SEE IT ON AN X-RAY. THERE IS A BIG  
23 SHADOW ON THE X-RAY IN THE LUNG. SOME OF THE DOCTORS  
WHO  
24 TESTIFY MAY EVEN TELL YOU IT WILL LOOK AS BIG AS A GOLF  
25 BALL. THAT WASN'T SEEN IN MS. HENLEY'S CASE.  
26 SO THE DOCTOR THEN DID A PROCEDURE THEY CALL A  
27 BRONCHOSCOPY, AND HERE IS WHAT THAT IS. THE DOCTORS  
HAVE A  
28 TUBE THAT THEY CAN ACTUALLY STICK DOWN YOUR WINDPIPE  
INTO

JUDITH ANN OSSA, CSR NO. 2310

82  
1 YOUR LUNG, AND IT HAS A CAMERA ON IT. AND THEY CAN LOOK TO  
2 SEE IF THEY SEE ANYTHING ABNORMAL. THEY HAVE A LITTLE  
3 PINCHER ON THE END OF IT. WHAT THEY CAN DO IS THEY CAN TAKE  
4 A PIECE OF IT, LOOK AT IT UNDER THE MICROSCOPE. IT'S CALLED  
5 A BRONCHOSCOPY.  
6 IN THIS CASE, THEY DID THE BRONCHOSCOPY AND THEY  
7 DIDN'T FIND ANYTHING ABNORMAL. THERE WERE NO LESIONS. THE  
8 WORD IS "ENDOBONCHIAL," INSIDE THE BRONCHUS. INSIDE THE  
9 AIRWAYS A LESION IS SUSPECTED OR TUMOR. THERE WERE NO  
10 ENDOBONCHIAL LESIONS. THEY DIDN'T SEE ANYTHING ABNORMAL  
11 INSIDE THE LUNG.  
12 YOU'LL HEAR TESTIMONY FROM THE DOCTORS THAT IN  
13 MOST PEOPLE WHO HAVE CANCER THAT STARTS GROWING IN THE  
LUNG,  
14 YOU CAN FIND AN ENDOBONCHIAL LESION ON BRONCHOSCOPY.  
15 SO WHAT THE DOCTOR DID THEN WAS SOMETHING A  
16 LITTLE DIFFERENT. HE ACTUALLY MADE AN INCISION IN THE SIDE  
17 OF MS. HENLEY'S CHEST AND PUT A TUBE, PUT WHAT THEY CALL A  
18 SCOPE, A MEDIASTINOSCOPE, WHICH IS THE SAME KIND OF TUBE.  
19 IT DOESN'T GO DOWN YOUR WINDPIPE. IT JUST GOES INTO YOUR  
20 CHEST.  
21 WHAT THE SURGEONS SAID -- THIS IS THE REPORT THE  
22 SURGEON WRITES OUT AFTER HE DOES THE PROCEDURE. THIS IS  
THE  
23 MAN WHO ACTUALLY DID IT. THIS IS WHAT HE WAS LOOKING AT.  
24 HE SAID: "I PUSHED THE LUNG ASIDE AND THEN TOOK A BIOPSY  
25 FROM SOMETHING IN THE CHEST CAVITY." SO THE TUMOR THAT  
THEY  
26 BIOPSIED WAS NOT INSIDE MS. HENLEY'S LUNG.  
27 THEY SENT TO IT A PATHOLOGIST, WHO IS A DOCTOR IN  
28 A LABORATORY, WHO LOOKED AT IT UNDER THE MICROSCOPE. HE

JUDITH ANN OSSA, CSR NO. 2310

83  
1 SAYS "THAT'S A SMALL CELL CARCINOMA." THERE IS NO DISPUTE  
2 THAT THIS IS A SMALL CELL CARCINOMA. IT'S A TYPE OF  
3 CANCER. BUT HE DOESN'T SAY IT STARTED IN THE LUNG, BECAUSE  
4 ALL HE'S DOING WAS LOOKING AT IT UNDER THE MICROSCOPE AND  
IT

5 DIDN'T COME FROM THE LUNG. IT CAME FROM OUTSIDE THE LUNG.  
6 HE'D NEED MORE INFORMATION TO DO THAT.  
7 YOU WILL HEAR IN THE CASE THAT WHETHER THIS  
8 CANCER STARTED INSIDE MS. HENLEY'S LUNG OR OUTSIDE OF HER  
9 LUNG, SHE WOULD HAVE BEEN TREATED THE SAME WAY. THE  
DOCTORS  
10 DIDN'T MAKE A TREATMENT -- THE DOCTORS WOULD HAVE  
TREATED  
11 HER THE SAME WAY NO MATTER WHERE THE CANCER STARTED. IT  
WAS  
12 INOPERABLE. SO THEY GAVE HER CHEMOTHERAPY AND THEY  
GAVE HER  
13 RADIATION. BUT THEY WOULDN'T HAVE CHANGED THE WAY THEY  
14 TREATED IT DEPENDING ON WHERE THEY THOUGHT IT STARTED.  
15 AND THEN THE OTHER THING THEY DID WAS THEY DID  
16 SOME BONE SCANS TO CHECK FOR METASTASES. YOU'LL HEAR  
17 EVIDENCE THAT IN MOST PATIENTS WHO HAVE A SMALL CELL  
CANCER  
18 THAT STARTS IN THE LUNG, BY TIME THEY FIND IT IN THE LUNG,  
19 IT'S ALREADY UNFORTUNATELY SPREAD TO THE BRAIN OR THE  
BONE.  
20 SO THEY DID A BONE SCAN ON MS. HENLEY, AN MRI, WHICH IS THE  
21 SAME KIND OF THING ON THE HEAD (INDICATING). IT WAS  
22 NEGATIVE.  
23 MS. CHABER: YOUR HONOR, I HATE TO INTERRUPT.  
24 BUT CAN WE HAVE A SIDEBAR AND CAN MR. OHLEMEYER TAKE  
DOWN  
25 THE REPORT?  
26 THE COURT: YES.  
27 (COURT AND COUNSEL CONFER OUTSIDE  
28 THE PRESENCE OF THE JURY)

JUDITH ANN OSSA, CSR NO. 2310

84

1 THE COURT: YOU MAY PROCEED.  
2 MR. OHLEMEYER: WHAT YOU'LL SEE IS THE REPORT  
3 PREPARED BY THE SURGEON, WHAT THEY CALL A DISCHARGE  
SUMMARY,  
4 WHERE HE PUTS ALL THE INFORMATION THAT HE KNOWS ABOUT  
THE  
5 PATIENT, WRITES IT ALL OUT. YOU'LL HEAR THAT THEY DIDN'T  
6 FIND ANY SPREAD OF THE CANCER IN MS. HENLEY'S BONE OR  
7 BRAIN. YOU WILL HEAR THAT IS NOT TYPICAL OF CANCER,  
8 ESPECIALLY SMALL CELL CANCER THAT STARTS IN THE LUNG.  
9 THE SURGEON WHO SIGNED OFF ON THE DISCHARGE  
ON  
10 SUMMARY WROTE ON IT THAT "THERE WAS NO PRIMARY IDENTIFIED  
THAT  
11 THE CHEST CT SCAN OR INTRAOP." AND YOU WILL HEAR WHAT  
12 MEANS IS THAT HE DIDN'T THINK THAT THERE WAS TUMOR  
13 DEMONSTRATED ON THE CT SCAN. HE DIDN'T SEE A TUMOR, A  
14 PRIMARY TUMOR IN THE LUNG ON THE PROCEDURE HE DID. AND  
HE  
15 CALLS IT A SMALL CELL CARCINOMA.  
16 SO THE EVIDENCE IN THIS CASE WILL BE THAT NO  
17 DOCTOR WHO IS DIAGNOSING OR TREATING MS. HENLEY EVER SAW  
OR  
18 TOUCHED OR BIOPSIED TUMOR FROM INSIDE HER LUNG. YOU'LL  
HEAR  
19 A LOT OF TESTIMONY ABOUT THAT IN THIS CASE.  
20 YOU'LL ALSO HEAR FROM DOCTORS WHO HAVE STUDIED

STARTS 21 SMALL CELL CANCER, WHETHER IT STARTS IN THE LUNG OR  
22 OTHER PLACES, AND HAVE WRITTEN ABOUT IT AND HAVE DONE  
23 OPERATIONS AND SEEN IT. AND THEY'LL TELL YOU WHAT THEY  
24 THINK ABOUT THIS CANCER AND WHETHER IT CAN BE DETERMINED  
25 WITH ANY REASONABLE CERTAINTY WHERE IT STARTED GROWING.  
26 AND THEY'LL TELL YOU THAT THERE ARE OTHER  
27 THINGS -- OTHER PLACES IN THE BODY IN AND AROUND THE  
28 MEDIASTINUM THAT CAN PRODUCE THESE TYPES OF TUMORS,  
ALTHOUGH

JUDITH ANN OSSA, CSR NO. 2310

85

1 THERE'S A LOT ABOUT IT THAT'S HARD TO KNOW BECAUSE OF THE  
2 LIMITED AMOUNT OF INFORMATION.  
3 SO THE LAST THING I WANT TO TALK ABOUT -- AND I  
4 APPRECIATE HOW PATIENT YOU HAVE BEEN. IT'S GOING A LITTLE  
5 SLOWER THAN I THOUGHT IT WOULD -- IS QUITTING SMOKING.  
6 NICOTINE -- YOU ARE GOING TO HEAR A LOT ABOUT NICOTINE IN  
7 THIS CASE. NICOTINE OCCURS NATURALLY IN THE TOBACCO PLANT.  
8 PEOPLE HAVE STUDIED NICOTINE FOR HUNDREDS OF YEARS. WHEN  
9 YOU MAKE A CIGARETTE, THE AMOUNT OF NICOTINE THAT ENDS UP  
IN  
10 THE SMOKE IS ALWAYS LESS THAN THE AMOUNT OF NICOTINE  
THAT'S  
11 IN THE TOBACCO THAT GOES IN THE CIGARETTE.  
12 SO YOU ARE GOING TO HEAR A LOT ABOUT NICOTINE AND  
13 HOW IT'S STUDIED. THERE HAS BEEN A LOT RESEARCH PUBLISHED  
14 ABOUT NICOTINE OVER THE YEARS. AND THERE'S BEEN A LOT OF  
15 DEBATE ABOUT NICOTINE. PEOPLE HAVE WONDERED. AND LET ME  
16 SAY THIS. PHILIP MORRIS DOES NOT ADD NICOTINE TO  
17 CIGARETTES. THEY DON'T SPIKE CIGARETTES WITH NICOTINE.  
18 THEY DON'T MANIPULATE CIGARETTES TO ADD THE NICOTINE  
THAT'S  
19 MORE THAN WHAT'S IN THE TOBACCO.  
20 ACTUALLY, AS I TOLD YOU, YOU WILL HEAR THAT THE  
21 AMOUNT OF NICOTINE IN CIGARETTE SMOKE HAS DECREASED  
OVER THE  
22 YEARS, STEADILY DECREASED. AND MAKING CIGARETTE REDUCES  
THE  
23 AMOUNT OF NICOTINE IN THE SMOKE COMPARED TO WHAT'S IN THE  
24 TOBACCO WHEN YOU SMOKE THE CIGARETTE.  
25 BUT PEOPLE HAVE STUDIED WHY PEOPLE SMOKE. YOU  
26 ARE GOING TO HEAR SOME TESTIMONY ABOUT THAT, AND THERE  
ARE  
27 PEOPLE WHO HAVE WRITTEN ABOUT IT AND SAID: "WE THINK  
PEOPLE  
28 SMOKE BECAUSE OF NICOTINE." THERE ARE PEOPLE WHO HAVE

JUDITH ANN OSSA, CSR NO. 2310

86

1 WRITTEN WHO SAID: "WE THINK THEY SMOKE IN SPITE OF  
2 NICOTINE."  
3 SOMETHING ELSE YOU WILL HEAR ABOUT RESEARCH.  
4 PEOPLE WILL TELL YOU PEOPLE SMOKE FOR DIFFERENT REASONS.  
5 SOME PEOPLE SMOKE TO RELAX. SOME PEOPLE SMOKE TO DO  
6 SOMETHING WITH THEIR HANDS. SOME PEOPLE SMOKE BECAUSE  
IT'S  
7 AN ICEBREAKER. IT'S A WAY TO PASS SOME TIME. AND ALL THAT

8 STUFF HAS BEEN STUDIED AND ALONG WITH NICOTINE.  
9 I MEAN, THERE IS NO DOUBT THAT YOU'LL HEAR THAT  
10 NICOTINE IS ONE OF THE REASONS PEOPLE SMOKE. ALTHOUGH  
YOU  
11 ARE GOING TO HEAR THAT PHILIP MORRIS AND OTHER COMPANIES  
SMOKE  
12 HAVE MADE CIGARETTES WITH ALMOST NO NICOTINE IN THE  
13 THAT ARE VERY POPULAR IN OTHER PARTS OF THE WORLD. THAT  
14 THEY TRIED TO SELL A CIGARETTE WITH NO NICOTINE, ALMOST  
LIKE  
15 A DECAFFEINATED CIGARETTE. THAT THEY HAVE ALSO TRIED TO  
16 CREATE PRODUCTS THAT DELIVER LESS AND LESS NICOTINE.  
17 BUT BE THAT AS IT MAY, THERE IS NO DOUBT PEOPLE  
18 SMOKE IN PART BECAUSE OF NICOTINE. THAT'S NOT A SECRET.  
19 IT'S SOMETHING THAT HAS BEEN STUDIED FOR A LONG TIME  
20 THROUGHOUT THE WORLD.  
21 IN SPITE OF THAT, YOU WILL HEAR MS. HENLEY TELL  
22 YOU WHY SHE SMOKED. SHE WILL TESTIFY THAT SHE SMOKED  
23 BECAUSE SHE ENJOYED IT. SHE WILL SAY THAT SHE ASSOCIATED  
24 CIGARETTE SMOKING WITH OTHER THINGS IN HER LIFE THAT SHE  
DID  
25 THAT PROVIDED HER PLEASURE, THAT SHE ENJOYED.  
26 SHE WILL TELL YOU AT TIMES SHE SMOKED AND IT WAS  
27 SOMETHING THAT RELAXED HER. AT TIMES, IT WAS SOMETHING  
THAT  
28 OTHER PEOPLE SHE WAS AROUND WERE DOING, BUT SHE WILL

JUDITH ANN OSSA, CSR NO. 2310

87

1 DEFINITELY TELL YOU THAT SHE ENJOYED SMOKING. IT WAS  
2 SOMETHING THAT SHE ASSOCIATED WITH THOSE PARTS OF HER  
LIFE  
3 THAT SHE FOUND ENJOYABLE.  
4 NOW, THERE ARE SO MANY WAYS -- YOU ARE GOING TO  
5 HEAR A LOT ABOUT ADDICTION. THERE'S SO MANY WAYS TO DEFINE  
6 ADDICTION. YOU'LL HEAR THAT IT'S BEEN APPLIED TO ALL KINDS  
7 OF THINGS. IT'S BEEN APPLIED TO THINGS LIKE HEROIN,  
8 COCAINE. THE WORD HAS BEEN APPLIED TO CIGARETTE SMOKING.  
9 IT'S BEEN APPLIED TO THINGS LIKE BEING ON THE INTERNET. BUT  
10 FOR THE PURPOSES OF THIS LAWSUIT, YOU ARE GOING TO HEAR  
THAT  
11 AT DIFFERENT POINTS IN TIME, DIFFERENT PEOPLE HAVE USED  
12 DIFFERENT DEFINITIONS TO DESCRIBE WHETHER CIGARETTE  
SMOKING  
13 IS ADDICTIVE AS OPPOSED TO A HABIT OR A DEPENDENCE OR  
14 SOMETHING IN BETWEEN.  
15 AND IN THIS LAWSUIT, YOU'LL HEAR FROM WITNESSES  
16 WHO WILL TELL YOU THAT IT'S NOT THE LABEL THAT YOU APPLY  
17 THAT IS IMPORTANT AS WHAT EFFECT IT HAS ON BEHAVIOR. AND  
18 CIGARETTE SMOKING HAS A VERY DIFFERENT EFFECT ON THE  
19 BEHAVIOR OF SOME PEOPLE.  
20 THE PEOPLE DESCRIBED AS ADDICTIVE PEOPLE WHO  
21 SMOKE CIGARETTES ARE TYPICALLY PEOPLE WHO GO TO WORK,  
WHO  
22 FUNCTION, WHO DO THE THINGS THAT PEOPLE WHO DON'T SMOKE  
DO  
23 DURING THE DAY. PEOPLE WHO USE OTHER THINGS THAT PEOPLE  
24 CALL ADDICTIVE DON'T. YOU ARE GOING TO HEAR TESTIMONY  
ABOUT  
25 THAT.  
26 AND YOU ARE ALSO GOING TO HEAR TESTIMONY, AS I

27 SAID, ABOUT THE PEOPLE WHO QUIT SMOKING, THE ALMOST 50  
28 MILLION PEOPLE WHO THE CENTER FOR DISEASE CONTROL HAVE  
SAID

JUDITH ANN OSSA, CSR NO. 2310

88

1 HAVE QUIT, HOW THEY QUIT, WHETHER IT'S EASY FOR SOME  
PEOPLE,  
2 WHETHER IT'S HARD FOR SOME PEOPLE. YOU WILL HEAR  
OBVIOUSLY  
3 ABOUT MS. HENLEY'S DECISION TO QUIT AND THE FACT THAT SHE  
4 DID QUIT.  
5 AND YOU ARE GOING TO HEAR THAT DIFFERENT PEOPLE  
6 BELIEVE OR THINK THAT THERE ARE DIFFERENT BENEFITS TO  
7 SMOKING, JUST AS THERE ARE RISKS ASSOCIATED WITH SMOKING.  
8 EVEN SOME OF THE DOCTORS THAT YOU'LL HEAR IN THE  
PLAINTIFF'S  
9 CASE WILL TELL YOU ABOUT THE BENEFITS OF SMOKING AND HOW  
10 THAT'S BEEN STUDIED.  
11 SO YOU ARE GOING TO HEAR A LOT ABOUT THE RISKS  
12 ASSOCIATED WITH SMOKING IN THE CASE. YOU ARE GOING TO  
HEAR  
13 A LOT ABOUT THE BENEFITS THAT PEOPLE ASSOCIATE WITH  
14 SMOKING. YOU ARE GOING TO HEAR A LOT ABOUT CIGARETTES.  
YOU  
15 ARE GOING TO HEAR A LOT ABOUT PHILIP MORRIS. AND YOU  
GOING  
16 TO HEAR A LOT ABOUT PATRICIA HENLEY, BECAUSE THIS IS A CASE  
17 ABOUT PATRICIA HENLEY.  
18 AND MS. HENLEY WAS ASKED AT HER DEPOSITION  
19 WHETHER AT SOME POINT IN TIME WHILE SHE WAS A SMOKER  
THERE  
20 WERE WARNINGS ON THE PACKS. AND SHE SAID "YES, THERE  
WERE.  
21 CORRECT."  
22 AND SHE WAS ASKED AT HER DEPOSITION WHETHER SHE  
23 EVER EXPECTED TO BE COMPENSATED FOR HER DECISION TO  
SMOKE  
24 CIGARETTES AND SHE SAID "NO."  
25 AND SHE WAS ASKED AT HER DEPOSITION WHETHER SHE  
26 THOUGHT SOMEONE ELSE WAS RESPONSIBLE FOR HER DECISION  
TO  
27 SMOKE AND SHE SAID "NO."  
28 AND I APPRECIATE YOUR PATIENCE. I LOOK FORWARD

JUDITH ANN OSSA, CSR NO. 2310

89

1 TO PRESENTING THE EVIDENCE IN THE CASE. AND THANK YOU FOR  
2 BEING SO PATIENT.  
3 THANK YOU, YOUR HONOR.  
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JUDITH ANN OSSA, CSR NO. 2310